

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

827

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED

AUG 13 1957

Joseph W. Stewart
CLERK

No. 14,006

NELL M. LEONARDO,

Appellant

v.

PETER S. LEONARDO,
and
REBECCA AUTERI,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH M. BONUSO

310 Wire Building
Washington 5, D. C.

Attorney for Appellant

(i)

STATEMENT OF QUESTIONS PRESENTED

1. Was the deed to the property in question delivered prior to the marriage?
2. Was the appellant's interest in the said property fairly represented by her interest in the Maryland property?
3. Did the appellee, Peter S. Leonardo, attempt to divest himself of the legal title to the property in question in contemplation of his marriage to the appellant?
4. Did the appellant acquire an interest in the property in question?

INDEX

	<u>Page</u>
JURISDICTIONAL STATEMENT.	1
STATEMENT OF THE CASE	1
STATEMENT OF POINTS	7
STATUTES INVOLVED	8
ARGUMENT:	
I. The Evidence Does Not Establish That The Deed To The Property Was Delivered Prior To The Marriage	8
II. The Court Erred In Finding, That The Evidence Disclosed, That The Appellant's Interest In The Said Property, Is Fairly Represented By Her Interest In The Maryland Property	10
III. The Court Should Have Granted A Decree Vacating And Setting Aside The Deed To The Extent That Such Deed Affected The Appellant's Right Of Dower In Such Property	11
IV. A Party's Failure To Appear Or Testify As To Facts Within His Knowledge Raises A Presumption That His Testimony Would Have Been Unfavorable To Him	13
V. The Court Erred In Not Entering A Judgment Or Decree Against The Property Which Would Fairly Represent The Appellant's Interest In The Said Property	13
CONCLUSION	15

TABLE OF CASES

Curtis v. Rives, 75 U.S. App. D.C. 66, 123 Fed. 2d. 936	11
Fisch v. Standard Factors Corp., 67 S. Ct. 972, 330 U.S. 835, 91 L. Ed. 1282	11
Holzbierlein v. Holzbierlein et al, 67 App. D.C. 219, 91 Fed. 2d. 250	12
Meier v. Commissioner of Internal Revenue, 199 Fed. 2d 392, at pp. 396	13
Schilling et al v. Schwitzercummins Co., 79 U.S. App. D.C. 201, 142 Fed. 2d. 82	11
Schooler v. Schooler, 84 U.S. App. D.C. 147, 173 Fed. 2d. 299	10
United States v. One 1948 Plymouth Sedan, 87 F. Supp. 967	13

STATUTES

D.C. Code 1951, Title 45, Section 501	8
---	---

MISCELLANEOUS

Act of June 25, 1948, 62 Stat. 929, 28 U.S.C.A., Section 1291	1
---	---

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,006

NELL M. LEONARDO,
Appellant

v.

PETER S. LEONARDO,
and
REBECCA AUTERI,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The District Court of the United States for the District of Columbia had jurisdiction under the District of Columbia Code 1951, Title 11, Section 306. The jurisdiction of this Court is invoked under the Act of June 25, 1948, 62 Stat. 929, 28 U.S.C.A. Section 1291.

STATEMENT OF THE CASE

This case was first appealed from an order entered on May 11, 1956, wherein the court below, after hearing found:

1. "That the property located at 1764 Columbia Road, N.W., Washington, D.C., was deeded by the defendant Leonardo to his daughter before the common law marriage was entered into; that the daughter paid \$10.00 as consideration for the said property; and that thereafter she executed a power of attorney to the defendant Leonardo, which authorized him to manage the property and live therein rent free; that no misconduct was shown against the defendant, Rebecca Auteri, to warrant a judgment or decree against the said property.
2. That the evidence was insufficient to establish that the plaintiff had any interest in the Columbia Road property.
3. That the plaintiff, during her cohabitation with the defendant, Leonardo, turned over to him for their joint account and living expenses the greater part of her salary; that no strict account was kept between them.
4. That the evidence disclosed that the plaintiff and the defendant, Leonardo, owned real estate by the entirety in Maryland; that the plaintiff's interest in the Maryland property fairly represented plaintiff's equitable interest in the property acquired by reason of the common law marriage." (J.A. 6-7)

The Court of Appeals in case #13,449 decided on December 13, 1956, reversed the Trial Court, and remanded, with directions to:

1. Make a finding as to whether or not the deed was delivered.
2. Have the record reflect the evidence which
 "Disclosed that the plaintiff and the defendant, Leonardo, owned real estate by the entirety in Maryland; that the plaintiff's interest in the Maryland property fairly represents plaintiff's equitable interest in the property acquired by reason of the common law marriage." (J.A. 46)

That on April 8, 1957, the Trial Court without taking any further testimony and without any further proceedings whatsoever made the following additional findings:

"From testimony of the defendant, Auteri, and the evidence as to the deed and a power of attorney and the recording thereof, that the deed in question was delivered prior to the establishment of the common law marriage and finds further,

that the evidence which disclosed that the plaintiff and the defendant, Leonardo, owned real estate by the entirety in Maryland was the statements of the parties and their counsel and their discussion and agreement as to the improvements thereon and the value thereof made in court and at pretrial conferences. Such real estate was not involved directly in the controversy, and was mentioned by the court in passing when considering the claim of the plaintiff that she had contributed to the living expenses and savings during the cohabitation.

That the judgment of this court, which was based not so much on the evidence as on the failure of the plaintiff's evidence, with these additional findings and comments it is re-affirmed." (J. A. 48)

In this case, the appellant, brought a suit to impress her dower interest upon a parcel of land located at 1764 Columbia Road, Northwest, in the City of Washington, District of Columbia, and for other relief. (J. A. 1-3)

The appellee, Peter S. Leonardo, filed an amended answer denying all of the allegations of the complaint and alleged that the property in question had been conveyed to his daughter, Rebecca Auteri, the appellee herein, on May 8, 1945. (J. A. 3-4)

An amended answer was filed on behalf of the appellee, Rebecca Auteri, wherein it was alleged, among other things, the property for a valid consideration had been conveyed to her by a fully executed deed dated May 8, 1945. (J. A. 5-6)

At the trial hereof, the appellant testified in her own behalf substantially as follows:

That she met the appellee, Peter S. Leonardo, in the winter of 1944; that soon thereafter they commenced keeping company, during which time they discussed marriage to each other. (J.A. 9-10)

That the appellee, Peter S. Leonardo, was estranged from his daughter, the appellee, Rebecca Auteri. (J.A. 9)

That the appellant first met the daughter of the appellee, Peter S. Leonardo, in the summer of 1947, when some friends from Baltimore took the daughter to their home in Washington in an endeavor to reunite the father and daughter after many years of estrangement. (J.A. 9)

That in the latter part of April, 1945, the appellee, Peter S. Leonardo, was being evicted from his place of business. That in order to move his business the appellee stated he would have to buy some property. (J.A. 11-12)

That he also discussed with the appellant whether or not she was willing to work after their marriage. That she told him she was glad to do so and would chip in and pitch in to help with the endeavor. (J.A. 11)

That the appellee, Peter S. Leonardo, didn't have any children or friends to help him so that she helped him. (J.A. 13-14)

That on or about May 4, 1945, the appellee, Peter S. Leonardo, stated to the appellant that he had purchased the property located at 1764 Columbia Road, Northwest, City of Washington, District of Columbia, but that he did not have enough money to make settlement thereon and that he, therefore, asked the appellant to help him pay the title and abstract company, (J.A. 11) which she did (J.A. 11) and that from May 4, 1945 to December 24, 1949, the appellant continued to financially help the appellee, Peter S. Leonardo. That the parties lived together as husband and wife from July 7, 1945, up to December 24, 1949. That during this time the appellant's salary was between \$2,400 and \$2,700 per year. (J.A. 13, 14, 18) That she gave all of this salary to the appellee, Leonardo, they had a joint bank account

(J.A. 7, 15); that when the appellee, Leonardo, purchased the said property in question it was an unfurnished apartment building (J.A. 14); that by working together and pooling all of their money they converted the property to a furnished apartment building thereby increasing the rental income from \$195.00 per month to \$450.00 per month. (J.A. 34)

That from May 4, 1945, until the parties separated on December 24, 1949, the appellant was led to believe that the appellee, Peter S. Leonardo, was the sole owner of the property and that upon his death the property would be hers; that all during the time that the parties were living together as husband and wife she did not know that her husband had made a deed to the property conveying the property to his daughter, Rebecca Auteri; that she did not learn of this until sometime after the separation. (J.A. 16).

Mr. Jones, of the Perpetual Building and Loan Association, testified on behalf of the appellant substantially as follows: that a deed of trust on the said property is being held by the Perpetual Building and Loan Association of Washington, D. C.; that on May 5, 1945, a loan was made to a Mr. M. E. Dower; that on June 6, 1945, the said loan was transferred to P. S. Leonardo; that on November 23, 1951, the loan was transferred from P. S. Leonardo to Rebecca Auteri (J.A. 19); that the loan was protected by fire insurance; that in 1945 the policy was in the name of P. S. Leonardo and that on November 23, 1951, it was transferred to Rebecca Auteri (J.A. 19); that the Perpetual Building and Loan Association would not change any record whatsoever to the new owner until such time that they received the actual deed of transfer, the recorder's receipt for that transfer, and a letter from the former owner notifying them that there was a transfer in the property and that the former owner's interest in the insurance policy would thereby be cancelled by that transfer, and that they would change the insurance to read in the name of the new owner. (J.A. 20).

A Mr. James, of the District of Columbia Assessor's Office, was called on behalf of the appellant. He testified substantially as

follows: that on May 7, 1945, the appellee, Peter S. Leonardo, took title to Lot 628 in Square 2864, which is known as premises 1764 Columbia Road, Northwest, in the City of Washington, District of Columbia; that on December 27, 1949, it was conveyed to the appellee, Rebecca Auteri. (J. A. 21).

The appellee, Peter S. Leonardo, took the stand on his own behalf and testified substantially as follows:

That he purchased the said property in question on May 4, 1945, at which time he had to make a cash down payment of FOUR THOUSAND (\$4,000.00) DOLLARS (J. A. 26); that he only had TWO THOUSAND (\$2,000.00) DOLLARS of his own money and that he therefore borrowed TWO THOUSAND (\$2,000.00) DOLLARS from the Second National Bank.

That on May 8, 1945, he made a deed transferring said property to his daughter; that his daughter was not present when he signed the deed; (J. A. 27) that he eventually delivered the deed to his daughter in Baltimore, at which time she gave him TEN (\$10.00) DOLLARS and she said "Thanks" (J. A. 27, 28). That his daughter gave him the power of attorney, which gave him the authority to deal with the property as if he was the owner thereof.

That he lived in the property rent free and has lived in and kept up the property up to the time that he testified in this case (J. A. 6, 28).

That all during this time he made leases with tenants in his own name as owner (J. A. 29) and that in controversies before the Rent Control Board involving this property he represented himself as the owner and that at no time did his daughter, the appellee Rebecca Auteri, ever appear as the owner in these controversies. (J. A. 30)

That the said property was converted from an unfurnished apartment building to a furnished apartment building (J. A. 32); that his daughter did not make any contributions towards the purchase of or the furnishings of the said property, other than the original TEN (\$10.00) DOLLARS for the deed.

He testified that he never borrowed money from a bank, which loans were evidenced by notes bearing the joint signature of the appellant and himself (J. A. 32). That when he was shown the notes in question, he admitted that his signature was on the notes, but stated that the signature of the appellant must have been added to the notes at a later date (J. A. 35).

That after some discussion, on this point, and after being admonished by the court, it was stipulated that the said notes were signed simultaneously by the appellant and the appellee, Peter S. Leonardo, and that he received the money from the said loan (J. A. 35-43). He also testified that on May 8, 1945, he executed a deed to the property in favor of his daughter which was not recorded until December 27, 1949. (J. A. 23).

The appellee, Leonardo, introduced into evidence a deed from him to his daughter, the appellee, Auteri. The deed was made May 8, 1945 and recorded on December 27, 1949 (J. A. 23). He also introduced the power of attorney dated October 23, 1948 and recorded in January, 1950 (J. A. 44).

The appellee, Rebecca Auteri, though present in court did not testify in her behalf. (J. A. 34)

STATEMENT OF POINTS

1. The court erred in finding that the evidence established that the deed was delivered prior to the marriage.
2. The Court erred in finding that the evidence disclosed that the appellant's interest in the said property, acquired by reason of the common law marriage, is fairly represented by her interest in the Maryland property.
3. The court erred in not granting a decree vacating and setting aside the deed to the extent that such deed affected the appellant's right of dower in such property.

4. The court erred in not entering a judgment of decree against the said property which would fairly represent the appellant's interest in said property.

STATUTES INVOLVED

District of Columbia Code 1951, Title 45, Section 501 provides:

"Any deed conveying real property in the District or interest therein, or declaring or limiting any use or trust thereof, executed for acknowledgment and certified as provided in Section 30-216, 45-106, 45-302, 45-401 to 45-404 and delivered to the person in whose favor the same is executed shall be held to take effect from the date of the delivery thereof."

ARGUMENT

I

THE EVIDENCE DOES NOT ESTABLISH THAT THE DEED TO THE PROPERTY WAS DELIVERED PRIOR TO THE MARRIAGE.

Both the father and daughter were present in court. However, neither one of them disputed the fact that they had been estranged for many years prior to the marriage, and that they did not reunite again until sometime in 1947.

In this case there was not one scintilla of evidence upon which the court could have found that the deed was delivered prior to the marriage.

1. We do have evidence to prove that the deed was signed in the District of Columbia.
2. That the daughter was not present when the deed was signed.
3. That the father delivered the deed to his daughter in Baltimore.
4. That the father and daughter were estranged until sometime in 1947.

5. That the power of attorney was dated October 23, 1948 and was recorded in January of 1950.

Therefore, it is logical to assume that the said deed was delivered sometime after 1947 and prior to October 23, 1948, when the father and daughter were reunited and when the daughter did give to the father the power of attorney.

Nevertheless, the trial court found that:

"From testimony of the defendant, Auteri, and the evidence as to the deed and a power of attorney, and the recording thereof, that the deed in question was delivered prior to the establishment of the common law marriage. * * * "

The appellee Auteri did not testify in her behalf. Surely her silence could not have established that the deed was delivered prior to the marriage.

The deed was signed on May 8, 1945 and was recorded on December 27, 1949. This, however, does not prove the date on which the deed was delivered. The power of attorney was signed October 23, 1948 and was recorded in January of 1950. This also does not prove that the deed was delivered prior to the marriage.

It is respectfully submitted that the only testimony we have with reference to the delivery of this deed was the testimony of the appellee, Leonardo, wherein he stated that he delivered the deed to his daughter in Baltimore. However, he did not and would not state the date upon which the delivery was made. Surely this does not prove that the deed was delivered prior to the marriage, especially when one takes into consideration that the daughter and father were estranged for many years prior to the summer of 1947.

The facts and circumstances surrounding this transaction conclusively prove that the said deed was not delivered until after 1947 when the father and daughter were reunited and became friendly again.

The law is well settled that deeds conveying real property cannot take effect without delivery to the person in whose favor they were executed.

District of Columbia Code 1951, Title 45, Section 501:

"Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed for acknowledgment and certified as provided in Sections 30-216, 45-106, 45-302, 45-401 to 45-404 and delivered to the person in whose favor the same is executed shall be held to take effect from the date of the delivery thereof."

Schooler v. Schooler, 84 U.S. App. D.C. 147, 173 Fed. 2d. 299:

"A deed conveying real property or any interest therein, or declaring or limiting any use or trust thereof, cannot take effect without delivery to a person in whose favor it was executed."

II

THE COURT ERRED IN FINDING, THAT THE EVIDENCE DISCLOSED, THAT THE APPELLANT'S INTEREST IN THE SAID PROPERTY, IS FAIRLY REPRESENTED BY HER INTEREST IN THE MARYLAND PROPERTY

It is respectfully submitted that nowhere in the record is there any evidence which reflects that the appellant's interest in the Maryland property fairly represents her interest in the property in question.

At the conclusion of this case, the court requested that the parties and their counsel should get together in an effort to try and reach a settlement of this case before any findings were made by the court.

That in an effort to comply with the court's request and to reach an agreement, the parties discussed many things in and out of the presence of the court. The parties took into consideration their interest in the property in question, and also discussed the value of their interest in the Maryland property. All of these discussions were very informal, not under oath, and were all made off of the record.

The Maryland property was not involved in this controversy nor was it pertinent to the issue.

Statements by the parties and their counsel, in endeavoring to settle the matter, all of which were made off the record, do not constitute evidence.

Therefore, it was error for the court to make a finding upon a matter which was not pertinent to the issue and which was unsupported by evidence.

Schilling et al v. Schwitzercummins Co., 79 U.S. App. D.C. 201, 142 Fed. 2d. 82:

"The ultimate test as to the adequacy of findings will always be whether they are sufficiently comprehensive and pertinent to the issues to provide a basis for decision, and whether they are supported by evidence."

Curtis v. Rives, 75 U.S. App. D.C. 66, 123 Fed. 2d. 936:

"The statement of the appellant's counsel that the witnesses sought by the appellant at the criminal trial 'were not called' and that 'he did not have these witnesses' and that the 'witnesses did not appear' were not in the form of testimony. They are but charges and as such do not constitute evidence."

Fisch v. Standard Factors Corp., 67 S. Ct. 972, 330 U.S. 835, 91 L. Ed. 1282:

"Finding of fact must be based on valid evidence."

III

THE COURT SHOULD HAVE GRANTED A DECREE VACATING AND SETTING ASIDE THE DEED TO THE EXTENT THAT SUCH DEED AFFECTED THE APPELLANT'S RIGHT OF DOWER IN SUCH PROPERTY.

It is undisputed that the appellee, Peter S. Leonardo, received the deed to the said property on May 4, 1945, and that on May 8, 1945, prior to his marriage to the appellant he executed a deed in the name of

his daughter, which deed was not placed on record until December 24, 1949. It is also undisputed that from May 4, 1945, up to and including the time in which this case was tried that the appellee, Leonardo, conducted himself as the sole owner of the property. That because of this, the appellant was led to believe that the appellee, Leonardo, was the sole owner of the property, and therefore contributed her money and labor towards the upkeep and development of the said property.

The law is well settled that if one, in contemplation of his marriage, conceives a plan to divest himself of the legal title to real estate owned by him in order to defraud his future wife of her inchoate right of dower in said property and that in order to conceal the transaction and to deceive and defraud his wife, continues to deal with it throughout as if he were the sole owner of the property, the court will grant a decree vacating and setting aside the deed executed by the husband conveying the said real estate to the extent that such deed bears upon or in any manner affects the wife's right of dower in said property.

In Holzbierlein v. Holzbierlein et al, 67 App. D. C. 219, 91 Fed. 2d. 250 where the defendant, in contemplation of his marriage to the plaintiff, conceived the plan to divest himself of the legal title to the real estate owned by him in order to defraud the plaintiff of her right of dower in the property, and that in order to conceal the transaction and fraud, transferred the title to a corporation but thereafter continued to deal with the said property throughout as if he were the sole owner of the property, it was held that the defendant was guilty of fraud, and that the plaintiff was entitled to a decree vacating and setting aside each deed executed by the defendant, conveying real estate to the corporation to the extent that such deed bears upon or in any manner affects plaintiff's right of dower in such property.

IV

A PARTY'S FAILURE TO APPEAR OR TESTIFY AS TO FACTS WITHIN HIS KNOWLEDGE RAISES A PRESUMPTION THAT HIS TESTIMONY WOULD HAVE BEEN UNFAVORABLE TO HIM.

The appellee, Rebecca Auteri, was present in court. It certainly was incumbent upon her to testify in her behalf. She was the only person other than the appellee, Leonardo, who refused to testify as to the date of the delivery, who could have testified as to when the deed in question was delivered to her.

United States v. One 1948 Plymouth Sedan, 87 F. Supp. 967:

"A party's failure to appear or to testify as to facts within his knowledge raises a presumption that his testimony would have been unfavorable to him."

Meier v. Commissioner of Internal Revenue, 199 Fed. 2d. 392, at pp. 396, and cases cited therein:

"The law creates a presumption, where burden is on a party to prove a material fact peculiarly within his knowledge, and he fails without excuse to testify, that his testimony, if introduced, would be adverse to his interests."

V

THE COURT ERRED IN NOT ENTERING A JUDGMENT OR DECREE AGAINST THE PROPERTY WHICH WOULD FAIRLY REPRESENT THE APPELLANT'S INTEREST IN THE SAID PROPERTY.

It is undisputed that during the time that the appellee, Leonardo, was negotiating for the purchase of the property in question, he did not have a business nor did he have an income; that he didn't even have a sufficient sum of money to make the down payment necessary to purchase the same.

Finding himself in this financial dilemma, he felt that it was urgent to find some source to finance the purchase of said property.

Being well acquainted with the appellant and knowing that she held a Government position and a steady income, the appellee, Leonardo, in order to get her life savings and income, proposed marriage to her. During this time he informed her that he intended to purchase the property in question and that they would occupy the said property and she would share in his business and also in the said property. That during these discussions, the appellee, Leonardo, extracted a promise from the appellant that she would be willing to continue working after her marriage and, further, that she would contribute her salary and efforts toward making this marriage a success.

Being assured of a steady income, which was to be supplied by the appellant, the appellee, Leonardo, purchased the property in question and borrowed the sum of \$2,000.00 in order to make the down payment of \$4,000.00 required to purchase the property.

That, thereafter, the appellee Leonardo and the appellant moved into the said property and occupied one of the apartments therein as husband and wife for many years.

That all during the time that these two parties lived together, the deed was not put on record and the appellee, Leonardo, conducted himself and dealt with the property as the sole owner thereof.

That this was done in order to defraud the appellant and to lead her to believe and, in fact, she did believe, that the said property was owned by her husband, the appellee Leonardo.

That because of this she gave her husband all of her life savings and contributed all of her salary and labor to enhance the value of the property in question.

That because of this, the appellee Leonardo was in a position to repay the loan and to make the monthly payments which were due by

reason of the purchase price of the said property and, in addition thereto, he was enable to convert the property to a furnished apartment building, thereby increasing the monthly income of said property from \$195.00 to \$450.00.

It is undisputed that the appellee, Auteri, contributed nothing toward this property. That, although she knew all about the deed and the power of attorney, she failed to apprise the appellant of this fact or to have the deed or the power of attorney recorded, and kept all of the transactions she had with her father a secret until after the parties separated. That all during the time that the appellant and the appellee, Leonardo, lived together as husband and wife, she permitted her father to conduct himself as the sole owner of the property.

That all of this was done in order to conceal the transaction and to deceive and defraud the appellant wife herein. That in fact, and because of this, the wife was deceived and defrauded and was caused to part with her life savings and with almost five years of her salary, work and labor, all of which was used to enhance the value of the property.

In view of the foregoing, this Court should not permit either the appellee, Leonardo, or the appellee, Auteri, to be unjustly enriched by reason of the fraud that was practiced upon the appellant by either one or both of the appellees.

CONCLUSION

In the light of all of the facts in this case the court should find:

1. That the deed to the property was not delivered prior to the marriage.
2. That the appellant has a dower interest in the said property.

3. That the appellee, Leonardo, in contemplation of his marriage conceived a plan to divest himself of the legal title to the said property in question.
4. That the appellant is entitled to a decree impressing the property with a trust to the extent of her interest therein because of the fraud that was practiced upon her by either the appellee, Leonardo, or the appellee, Rebecca Auteri, or both of them.

Respectfully submitted,

JOSEPH M. BONUSO

310 Wire Building
Washington 5, D. C.

Attorney for Appellant

(i)

INDEX

	<u>Record Page</u>	<u>Appendix Page</u>
Second Amended Complaint	173	1
Amended Answer of Peter S. Leonardo, Defendant	176	3
Amended Answer of Rebecca Auteri, Defendant	178	5
Findings of Facts and Conclusions of Law . .	180	6
Order	182	8
Excerpts from Transcript of Proceedings		
Witnesses:		
Nell M. Leonardo Direct	30	9
Roy L. Jones Direct	71	18
Cross	73	20
Charles C. James Direct	75	21
Cross	76	21
Peter S. Leonardo Direct	102	22
Cross	110	25
Nell M. Leonardo Direct	152	34
Peter S. Leonardo Cross	156	35
Opinion in Case No. 13, 449	184	45
Judgment	183	47
Order Vacating and Setting Aside Order of Dismissal	187	47
Notice of Appeal	189	49

JOINT APPENDIX

NELL M. LEONARDO,
Plaintiff

v.

PETER S. LEONARDO

and

REBECCA AUTERI,
Defendants.

Civil Action No. 1925-54

173 [November 10, 1954]

SECOND AMENDED COMPLAINT

(To Declare Dower)

1. That this Court has exclusive original jurisdiction over the matter involved herein as will hereinafter appear.

2. That the plaintiff, Nell M. Leonardo, is the wife of the defendant, Peter S. Leonardo.

3. That Rebecca Auteri is the daughter of the defendant, Peter S. Leonardo, by a former marriage.

4. That the plaintiff and the defendant, Peter S. Leonardo, became acquainted in October of 1944, after which they commenced keeping steady company. That during the said courtship the defendant, Peter S. Leonardo, on many occasions stated and represented to the plaintiff that he was the owner of a tailoring business and of a parcel of real estate located at 1764 Columbia Road, N. W., in the City of Washington, District of Columbia, and that if the plaintiff would become his wife she would share in the income derived from the said business and real estate.

5. That on or about May 8, 1945, prior to the said marriage, which took place on or about July 9, 1945, the defendant, Peter S. Leonardo, conveyed the said real estate in question to his daughter, Rebecca Auteri. That the conveyance was made without consideration and was in fraud and deceit of the plaintiff's rights as the contemplated wife of the said defendant, Peter S. Leonardo, and of her rights as his

wife, and was made with the intent to keep the plaintiff from participating, according to law, in her dower interest in the said real estate.

174 6. That at the time of her marriage to the defendant, Peter S. Leonardo, the plaintiff did not know or have means of knowing that the defendant, Peter S. Leonardo, had transferred the real estate to the defendant, Rebecca Auteri, but believed the representations made by the defendant, Peter S. Leonardo, that he owned the said real estate; that the defendant Peter S. Leonardo, had purposely concealed the transaction and withheld all information concerning it from her.

7. That the plaintiff and the defendant, Peter S. Leonardo, lived and co-habited together as husband and wife from on or about July 9, 1945, until on or about December 25, 1949, on which date defendant, Peter S. Leonardo, attacked the plaintiff, beating and choking her and threatened her life. That the plaintiff, in fear of further bodily harm, was forced to leave the home she occupied with the defendant, Peter S. Leonardo. That all during the time that the plaintiff and the defendant, Peter S. Leonardo, lived together as husband and wife, she was gainfully employed and continued under the impression that the real estate was owned by the defendant, Peter S. Leonardo, and she, therefore, used her salary to make improvements upon the said real estate, and also rendered personal and manual services in the conduct and operation of the said real estate without any compensation whatsoever.

8. That the plaintiff did not consent to the conveyance to the defendant, Rebecca Auteri, and had no knowledge thereof until on or about November 15, 1953, when the plaintiff had occasion to discuss her marital difficulties with her attorney, who, upon checking into the case, discovered a deed dated May 8, 1945, conveying the said real estate from the defendant, Peter S. Leonardo, to the defendant, Rebecca Auteri, which deed was recorded on December 27, 1950, in the Land Records of the District of Columbia.

9. That the defendant, Peter S. Leonardo, has since May 8, 1945, and up to the present time, retained and exercised control and

right of ownership over the said real estate and had been and is now receiving income thereof from the said real estate.

175 WHEREFORE, the plaintiff demands:

1. That the usual process and all orders of publication issue herein.

2. That the deed conveying premises 1764 Columbia Road, N. W., in the City of Washington, District of Columbia, be declared null and void and cancelled of record and as if the same had never been executed insofar as it might concern, involve, exclude the inchoate or consummate owner interest in the said property.

3. That the parcel of real estate conveyed by the defendant, Peter S. Leonardo, to the defendant, Rebecca Auteri, be impressed with the inchoate right or rights of dower to the said property.

4. That the plaintiff may have such other judgment as the nature and the exigencies of the case may require.

/s/ Joseph M. Bonuso
 Attorney for Plaintiff
 205 Denrike Building
 Washington, D. C.

[Certificate of Service]

176 [Filed March 19, 1956]

AMENDED ANSWER OF PETER S. LEONARDO, DEFENDANT

Comes now the defendant, Peter S. Leonardo, by his attorney James G. Tyson, and for answer to the second amended bill of complaint states as follows:

1. That the allegation in paragraph one is admitted.

2. That the allegation in paragraph two is denied.

3. That the fact that Rebecca Auteri, also named as a defendant in the complaint, as the daughter of this defendant is admitted; as to any other inference or allegation in paragraph three, the same is denied.

4. That every essential and material allegation of paragraph four is denied.

5. That the fact set out in the complaint that the defendant conveyed property owned by him at 1764 Columbia Rd., N. W., Washington, D. C. to the defendant Rebecca Auteri on May 8, 1945 is admitted; all other essential and material allegations set out in paragraph five are denied.

6. That every essential and material allegation in paragraph six is denied.

7. That every essential and material allegation in paragraph seven is denied.

8. That as to the allegations of paragraph eight, the defendant denies every essential and material fact set forth therein.

177 9. That every essential and material allegation of paragraph nine is denied; for further answer the defendant says that he is the legally appointed and designated agent of the owner of said property and manages same in line with said authority.

SECOND DEFENSE

That if the second amended complaint, has stated a cause of action upon which relief can be granted, the same has been barred, by the plaintiff's own action filed in the Circuit Court for Anne Arundel County, in the State of Maryland, equity No. 9084, upon which judgment was granted as prayed.

WHEREFORE, having fully answered the second amended complaint filed herein, the defendant, Peter S. Leonardo, prays that the same be dismissed without costs to him.

/s/ James G. Tyson
Attorney for Defendant

* * *

[Certificate Of Service]

178

[Filed March 19, 1956]

AMENDED ANSWER OF REBECCA AUTERI, DEFENDANT

Comes now the defendant, Rebecca Auteri, by her attorney James G. Tyson, and for answer to the second amended bill of complaint states as follows:

1. That the allegation of paragraph one is admitted.

2. That based on information and belief, the allegation set out in paragraph is denied.

3. That the allegation in paragraph three; to wit, that the defendant is the daughter of the defendant, Peter S. Leonardo, is admitted, as to any other inference the same is denied.

4. That based on information and belief, the material allegations of paragraph four are denied.

5. That the defendant admits the property, as set out in the complaint, was conveyed to her by fully executed deed dated May 8, 1954, and for further answer says that said fully executed deed was conveyed for a valid consideration and in accordance with law; all other essential and material allegations set out in paragraph five are denied, such denial based on information and belief.

6. That based on information and belief, and all material allegations of paragraph six are denied.

7. That based on information and belief, all essential and material allegations of paragraph seven are denied.

179

8. That the material allegations of paragraph eight are denied; such denial based on information and belief; for a further answer if such be material the allegation as to the date of the recordation of said instrument, is denied.

9. That the essential and material allegations of paragraph are denied; for further answer the defendant says that the defendant, Peter S. Leonardo, is the duly authorized managing agent for said property.

SECOND DEFENSE

That if the second amended complaint, has stated a cause of action upon which relief can be granted, the same has been barred by the

plaintiff's own action filed in the Circuit Court in the State of Maryland, for Anne Arundel County, equity No. 9084, upon which judgment was granted as prayed.

Wherefore, having fully answered the second amended Complaint, the defendant, Rebecca Auteri, prays that the same be dismissed without costs to her.

/s/ James G. Tyson
Attorney for Defendant
 * * *

(CERTIFICATE OF SERVICE)

180 [Filed May 11, 1956]

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This cause came on to be heard upon the second amended complaint of the plaintiff and the answers thereto and testimony being taken in open Court, whereupon the Court, this 11th day of May, 1956, makes the following findings:

FINDING OF FACT

That the plaintiff and the defendant, Peter S. Leonardo, on July 9, 1945, agreed to live together as husband and wife in the District of Columbia, which they did for a period of almost five years.

That the property located at 1764 Columbia Road, N. W., Washington, D. C., was deeded by the defendant Leonardo to his daughter before the common law marriage was entered into; that the daughter paid \$10 as consideration for the said property; and that thereafter she executed a power of attorney to the defendant Leonardo, which authorized him to manage the property and live therein rent free; that no misconduct was shown against the defendant, Rebecca Auteri, to warrant a judgment or decree against the said property.

That the evidence was insufficient to establish that the plaintiff had any interest in the Columbia Road property.

That the plaintiff, during her cohabitation with the defendant Leonardo, turned over to him for their joint account and living expenses the greater part of her salary; that no strict account was kept between them.

That the evidence disclosed that the plaintiff and the defendant Leonardo owned real estate by the entirety in Maryland; that the plaintiff's interest in the Maryland property fairly represents plaintiff's equitable interest in the property acquired by reason of the common law marriage.

181

CONCLUSIONS OF LAW

That a common law marriage was entered into by and between the plaintiff and the defendant, Peter S. Leonardo.

That title to the property located at 1764 Columbia Road, N. W., in the City of Washington, District of Columbia was acquired by the daughter of the defendant Leonardo before the common law marriage was entered into, and that the plaintiff acquired no interest in the said property.

That the plaintiff's interests in the Maryland real estate fairly represent her equitable interest in property acquired because of the common law marriage of the plaintiff and the defendant Leonardo.

/s/ R. N. Wilkin
Judge

We agree that the Court made the above findings and conclusions of law.

/s/ Jos M. Bonuso
Attorney for Plaintiff

/s/ James G. Tyson
Attorney for Defendants

[Filed May 11, 1956]

ORDER

Upon consideration of the second amended complaint of the plaintiff, Nell M. Leonardo, and the answers thereto of the defendants, Peter S. Leonardo and Rebecca Auteri, and testimony taken in open Court, and it appearing that all parties were represented by counsel, it is, by the Court, this 11th day of May, 1956,

ADJUDGED, ORDERED, AND DECREED:

That a common law marriage exists between the plaintiff, Nell M. Leonardo, and the defendant, Peter S. Leonardo, and has existed since July 9, 1945.

That the title to the property located at 1764 Columbia Road, N. W. in the City of Washington, District of Columbia, was acquired by the daughter of the defendant Leonardo before the common law marriage was entered into, and that the plaintiff acquired no interest in the said property.

That the defendant, Peter S. Leonardo, is hereby directed to pay all costs in this case.

/s/ R. N. Wilkin
JUDGE

Seen:

/s/ James G. Tyson, Attorney for
Defendants

1

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Washington, D. C.
Tuesday, April 24, 1956

The above-entitled matter came on for hearing before the Honorable Robert N. Wilkin, in Courtroom No. 14, United States District Court for the District of Columbia, commencing at 10:00 o'clock a. m., April 24, 1956.

APPEARANCES:

On Behalf of the Plaintiff: Joseph M. Bonuso, Esq.
On Behalf of the Defendant: James G. Tyson, Esq.

* * * * *

30

NELL M. LEONARDO

the plaintiff herein, was called by her counsel, * * *

DIRECT EXAMINATION

BY MR. BONUSO:

Q. * * * Will you please state your full name? A. Nell M. Leonardo.

Q. And Mrs. Leonardo, where do you live? A. 10205 Capitol View Avenue, Silver Spring, Maryland.

THE COURT: You are going to have to speak louder, we just can't hear you.

BY MR. BONUSO:

Q. And you are the wife of Peter S. Leonardo? A. I am.

* * * * *

31

MR. BONUSO: She said, "I am."

Q. And do you know Mrs. Rebecca Auteri? A. I do.

Q. When did you first meet Mrs. Rebecca Auteri? A. The summer of 1947.

Q. And under what circumstances did you meet her? A. Through a kindly friend who brought her over from Baltimore to unite the father and daughter. To unite father and daughter after many years of estrangement. He brought her over to see us.

Q. Who brought her? A. Mr. and Mrs. de Stevano of Baltimore.

Q. Brought her where? A. To 1764 Columbia Road.

Q. And who lived at 1764 Columbia Road? A. Mr. and Mrs. P. S. Leonardo.

Q. You mean this Mr. Leonardo and yourself? A. Yes.

* * * * *

33

Q. Did there come a time -- when did you first meet Mr. Leonardo? A. In 1944 I was introduced to him, danced with him, and we had a speaking acquaintance until fall.

THE COURT: Wait just a minute.

MR. BONUSO: You will have to keep your voice up.

THE WITNESS: In 1944.

* * * * *

34 Q. After the dance, what, if anything, did you do? A. He invited me to dinner the next evening.

Q. Did you go to dinner with him the next evening? A. Yes.

Q. When did you meet him after that?

MR. TYSON: Did you establish a date, the next time you met him?

THE WITNESS: The next time, it would be some time maybe in November or October or December, some time in the fall of 1944.

* * * * *

35 BY MR. BONUSO:

Q. Now, the fall of 1944, you say you met him and went to several dances and dinner with him. When did you see him after that?

A. Oh, we used to date every Sunday and as often after as he could.

Q. Now, during your dates, did you ever have any conversation with him? A. Oh, naturally.

Q. And what would you discuss? A. Oh, mutual interests.

Q. What were they? A. Well, one of them was marriage.

Q. What was said about marriage? A. Well, all along, I would say January or February, he had me confident --

MR. TYSON: Of what year?

THE WITNESS: It was in 1945, after Christmas. Then, I was confident he was very much in love with me and I knew I was in love with him. He had me convinced. He was calling me Comella, after Rebecca's mother, and I didn't know what it was all about. Finally, I found out after he confessed that I was so much like his first wife. He has had three, by the way.

36 BY MR. BONUSO:

Q. You say he discussed marriage? A. That's right.

Q. Did he talk to you, or you talk to him? A. He talked to me.

Q. Well, can we find out what happened? A. Naturally, if a man is very, very fond of you he asks you to marry him and you contemplate how in the world -- I lived in a government resident hall and he lived in a sleeping room, which neither one of us went to either place. He

merely called in the reception room for me and took me out and everything, so naturally we had to figure a place where we would live together after we were married.

Q. All right. Now, was there anything said about going through a legal ceremony? A. When a man proposes you take that for granted.

Q. All right. Did you go through any legal ceremony? A. No.

Q. Why? A. Well, it was along in April that he told me he -- he finally came out, and I knew it was, and he informed me that he was being -- his business was being evicted. And, in order to move his business he would have -- he would contemplate buying property. So that led to the discussion of how the ways and means which it was to be bought if he bought it.

37 Q. Which property was that, what address? A. It wound up by being 1764 Columbia Road. But there had to be a way and means, so he was feeling me out to find out if I would be willing to work after our marriage, which I said I would be glad to do. And also chip in and pitch in and help with the endeavor.

Well, along about late April, the courts had evicted him from his business, from where he was conducting his business. Well, there wasn't anything else to do. He didn't have any children to help him. He didn't have any friends, so I helped him by pitching in and helped him pack and box his stuff and even shared by government storage space in my own name for a part of his material, and the rest was moved to a kindly neighborhood businessman, Mr. and Mrs. King cleaning establishment.

On May, the 4th, about four or five days later, his business, he had to vacate the place because the court evicted him. So, on May the 4th, my birthday, when I met him that evening he said, "I bought 1764 Columbia Road. I don't have enough money. Can you help me to pay the title and abstract company?"

So, as it happened, it was my pay day, and I turned over the whole check so he could pay the abstract company to clear it and get the title to the property. It was another sixty days before he got possession.

In the meantime he began to tell me things about his childhood background, and I discovered he was a Catholic at heart, although he had been a member for years and years of the Jehovah Witness.

38 So, it all came out that he wanted his third marriage, he wanted it in the Catholic Church. Well, I have no objection to being married in the Catholic Church. To me it was perfectly sound if a man was born in a church, why not be married in his church.

My church is nonsectarian. We are not steadfast, so I agreed to be married in the Catholic Church, but we were both divorced. And I had to be widowed before the Catholic Church would accept me.

So, during that sixty days, two months, he convinced me that if I would live with him as man and wife we would be literally man and wife and contribute to all our endeavors, even to furnishing and redecorating, and everything.

MR. TYSON: What is this date?

THE WITNESS: Which date do you refer to?

MR. BONUSO: She said he was evicted in May.

MR. TYSON: About this marriage in the Catholic Church, can you give us some idea?

THE WITNESS: As soon as I was widowed we were to be legally married in a ritual of a church.

THE COURT: But counsel asked the question when did that date occur?

39 MR. BONUSO: Around what date?

THE WITNESS: That was during the sixty days when he was trying to get his business moved in at Columbia Road.

BY MR. BONUSO:

Q. Between April and July? A. Between May 4th and July 7th, 1945.

Q. Now, when he asked you to go and live with him and not go through a legal ceremony, why didn't you leave him then? A. Because I was all the time helping him, not only to get possession, I was sharing all my earnings already.

Q. All right. Did there come a time when he said for you to go live with him at 1764 Columbia Road as husband and wife? A. Yes.

Q. Did there come a time when you did go to live with him? A. Yes.

Q. When was that? A. July 7, 1945.

Q. Now, after July 7, 1945, did you continue living together as husband and wife? A. That was the beginning of the husband and wife relationship.

Q. After that? A. Yes.

40 Q. And how long did that continue? A. Till December 24, 1949.

Q. All right. Now, after you went to live with him, in July, 1945, did you consider yourself as his wife? A. Definitely.

* * * * *

43 THE WITNESS: It can be gotten.

BY MR. BONUSO:

Q. I think you testified, Mrs. Leonardo, that during the time you have been keeping company with Mr. Leonardo you loaned him some money to purchase 1764 Columbia Road. How much did you loan him? A. I don't know, because, simpleton that I was, I kept no records.

MR. TYSON: When was that?

THE WITNESS: I started the day he bought the property, May 4th.

BY MR. BONUSO:

Q. What day was that? A. May 4, 1945. I gave him a full pay check, endorsed it over to him, because he said he didn't have enough money for the title and abstract company.

THE COURT: And what was your salary at that time?

THE WITNESS: Oh, I think it was around \$2,400 to \$2,700.

* * * * *

44 BY MR. BONUSO:

Q. Was there any conversation at that time with reference to this property? A. Oh, yes.

Q. What was that? A. Well, he wasn't on speaking acquaintance with his children and didn't have any friends; and all our endeavors, our investments, both real and personal, were to be shared equally by us

until our death. This wasn't just a catch-as-catch-can marriage. He wanted me for the rest of his life.

Q. All right. Now, after you moved in, what if anything did you do with reference to this property? A. Helped him redecorate and buy furniture, and I was the only one that had charge accounts, and all furnishings were charged to my accounts, and so forth.

Q. You say "furnishings." Was that a furnished or unfurnished apartment when you took it over? A. It was unfurnished.

45 Q. How big a house was it? A. Four units.

Q. Four apartment units? A. One store, and three -- one for his work, and our residence, and the other two were apartments.

Q. You rented those out furnished or unfurnished? A. Eventually, within the first year, we furnished both apartments, and we redecorated the first.

Q. During that time, what kind of work was Mr. Leonardo doing? A. Custom tailoring.

Q. Were you working at that time? A. Yes.

Q. Where were you working? A. Reconstruction Finance.

Q. What was your salary? A. I couldn't say exactly. My pay vouchers speak for themselves.

Q. Well, have you any idea what salary you had? A. Something around \$2,500, or something like that. I know when I left it was \$2,700, in 1945.

Q. What, if anything, did you do with your money? A. It all went, it took everything that we could scrape up to put the place on an increased paying basis.

Q. The question I asked you is, what did you do with your money? A. We invested it in improvements at 1764 Columbia Road.

46 Q. When you say "we invested it," what do you mean? What did you do with your pay checks? That is what I am trying to get at. A. Well, if I charged something for the property, naturally I had to pay my bills. And if Mr. Leonardo run short of funds, I handed him whatever I could give him.

Q. Did you ever have a bank account during the time you were living with Mr. Leonardo? A. We had a joint checking account.

* * * * *

Q. You had a joint bank account with Mr. Leonardo? A. Yes.

47 Q. Now, did you get your pay checks, and would you deposit them in that account? A. Sometimes.

Q. And sometimes what would you do with it? A. Pay the bills.

Q. What bills? A. Anything we had incurred. Everything from upholstery shops to furniture, second-hand businesses, where we had bought furniture, because we had to economize to the extreme to get it furnished. Even to the labor for the contractors when the roof had to be repaired. Mr. Riley, back there, was one of them.

* * * * *

MR. BONUSO: I will ask the question this way, then: Did you collect money from the tenants in this property? A. Sometimes they paid to me, and I gave them a receipt.

BY MR. BONUSO:

Q. What would happen to that money? A. Turn it over to Mr. Leonardo.

Q. When Mr. Leonardo received that money, what happened to it? A. The same thing. He deposited it. We had a joint checking
48 account, too.

Q. All right. Did you ever make any accounting to Mrs. Auteri? A. No. Mrs. Auteri had nothing -- she wasn't even speaking to her father at that stage of our marriage.

Q. Who owned the property at that time? A. I presume that Mr. Leonardo did.

Q. Did you ever hear of Mrs. Auteri owning that property during that time? A. No, never.

Q. Did you ever discuss with Mrs. Auteri the fact that she owned the property? A. No, never did.

Q. Did you or Mr. Leonardo, to your knowledge, ever turn over any money for rents, and so on, to Mrs. Auteri? A. Not that I know of.

Q. Do you know of any that was? A. No, I know nothing. I'm sure he didn't.

Q. Who paid the taxes during the time that you had this house?
A. We did.

Q. Out of the joint bank account? A. I presume it was out of there. But we finally closed the joint bank account.

49 MR. TYSON: Don't you know?

THE WITNESS: No, because the husband is supposed to be the head of the house. Everything was paid through him.

MR. TYSON: When you say "we," you mean "He"?

THE WITNESS: He was the -- he has the canceled checks.

MR. TYSON: That is what I am trying to get at.

BY MR. BONUSO:

Q. Who paid the gas and electric for the house? A. Oh, that would depend. If I went down there, I would maybe pay it in cash. Generally speaking, he paid it by check.

Q. What I am trying to get at, either you or Mr. Leonardo paid those; is that correct? A. Oh, yes.

Q. Who paid the water rent in the house? A. The same.

Q. And were there any times when any apartments were vacant?
A. Oh, yes.

Q. Who rented those? A. I interviewed the prospective tenants and usually introduced them to Mr. Leonardo.

Q. Did you ever have any written leases with any of the tenants?
A. Oh, yes.

50 Q. Did Mrs. Auteri ever enter into any lease with anyone? A. Oh, no.

Q. Who would enter into the lease? A. Mr. Leonardo and the tenants.

Q. Mr. Leonardo. Is that right? A. Yes.

Q. And was that as an agent or as an owner? A. As owner.

Q. Mrs. Leonardo, when did you first discover that Mr. Leonardo had transferred the title to this property to his daughter? A. January 1950.

Q. What was the occasion for that? A. Well, he kept saying things that made me suspicious, making comments, and finally my curiosity sent me down to the Recording Office, Real Estate Recording Office, and I saw it with my own eyes. That was in 1950. He had sold her the property.

Q. Are you sure you mean sold it, or he had recorded the deed?
A. He recorded it in her name.

Q. What date? Do you recall? A. I don't recall the exact date, but it must have been about December 28th or 29th of 1949.

* * * * *

58 BY MR. TYSON:

Q. You testified, Mrs. Leonardo, that you first met Mr. Leonardo in January of 1944; is that correct? A. Yes.

Q. The next time that you saw him was in the fall? A. That's right. The first time I had a date with him was late 1944.

Q. Then, you said something about some marriage that took place; did you not say that? I have it here, something about a Catholic Church wedding. A. That was what Mr. Leonardo wanted his third marriage to be, in the Catholic Church, but because I was divorced, the Catholic Church cannot accept a divorcee, so it was understood our
59 relationship -- we would be faithful to each other, without --

Q. -- marriage? A. No. -- faithful regardless, until death part us, or I was widowed; then we would go in and have a regular ritual.

Q. Now, between the two of you, you decided this? A. Along in, I would say it was going on -- maybe February, March, or April. It was before I knew he was evicted from 1830 Columbia. He was evicted and he hadn't gotten the other property yet.

Q. Let's get this straight. I am trying to get when he asked you to marry him, and you accepted. According to your testimony, you said it was February, March, or April. When was it? A. That is when he proposed to me, and I did not know that he wanted a common-law marriage. I was not aware that that was what he had in mind. And it wasn't until after he informed me that he had bought 1764 Columbia Road

he already had my pay check, he already had other contributions, and he then, when he came out in the open, point-blank, and asked me to contribute, then I had already agreed to do that.

60 Q. That is, to contribute? A. Yes.

Q. When did he ask you to marry him, and when did you accept, according to your own testimony? A. Sometime just before July 7, 1945.

Q. Now, sometime could be any time in the last forty or fifty years. Give us some definite idea. A. It was probably about the 1st of July, 1945.

Q. July 1st? A. About that date.

Q. He asked you to be his wife and you accepted? A. He finally-- well, by the art of persuasion, and he is very good at that. I am not the only one.

Q. Well, will you answer my question? Because I want to know just what date it was. A. Well, I can't say positively, because how can anybody know the exact date you commit yourself to another man.

Q. Well, wasn't that an important day in your life? A. Well, we had been discussing marriage for months. He had already declared openly that he had picked me out of these hundreds of women, and told everybody he got the cream of the crop, and all that sort of thing, and how much he loved me, and all that sort of thing, and it had been going on, the discussion of marriage, and also the discussion about buying a property where he could move his business to, and we also could have a marital home.

61 Q. Now, you were together several years? You lived together several years? A. From July 7th, 1945, to December 24th, 1949.

Q. Now, is July 7th, the day that I am asking you for, the day that you entered into this so-called marital relationship? A. Yes.

* * * * *

71

ROY L. JONES

was called as a witness and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BONUSO:

Q. Will you state your full name, Mr. Jones? A. Roy L. Jones.

Q. Where do you work, Mr. Jones? A. Perpetual Building Association, Washington, D. C.

72 Q. You are here in answer to a subpoena in this case? A. I am.

Q. Do you have with you records pertaining to property at 1764 Columbia Road? A. Yes.

Q. Do you have a record as to who is the owner of a trust on that piece of property dated back in 1945? A. Yes, we have a complete record.

Q. Will you tell us who is the owner, and the date, please?
A. Do you want the present day owner or the original owner?

Q. The 1945 owner. A. In 1945, when our loan was made, it was made to M. E. Dower.

Q. What date was that? A. May 5, 1945.

Q. 5/5/45? A. Yes.

Q. Was that ever transferred, Mr. Jones? A. It was.

Q. When? A. It was transferred on June 6, according to our records, of 1945, to a party by the name of P. S. Leonardo.

Q. After June 6, 1945, was there any other transfer of that property? A. There was another transfer from P. S. Leonardo to Rebecca I. L. Auteri.

73 Q. What date was that? A. That was November 23, 1951, according to the records.

Q. Now, do you have that loan protected by fire insurance? A. We do.

Q. Whose name was on the policy, as of June 1945? A. In June 1945, the policy was originally in the name of M. E. Baker, also known as M. E. Dower, later transferred that same year, 1945, to P. S. Leonardo.

Q. Was it ever transferred after June of 1945? A. It was transferred to Rebecca Auteri on the 23rd of November, 1951.

MR. BONUSO: I have no further questions.

CROSS EXAMINATION

BY MR. TYSON:

Q. Mr. Jones, you are from what company, sir? A. Perpetual Building Association.

Q. Unless a property that was transferred had gone through the building and loan association, you would have no record of it until, of course, it appeared in the Recorder of Deeds Office? A. Normally so; yes.

74 Q. Taking it back to June 6, 1945, do the records show this property was transferred from Dower to Leonardo through the title company, or through transfer of record in the Recorder of Deeds Office? A. Our records indicate that on that particular transfer you are speaking of, June 6, 1945, the transfer from Dower to Mr. Leonardo, the transfer was handled through the District Title Company.

Q. District Title Company. Now, how about the transfer from Leonardo to Auteri? A. Our records do not indicate that there was any title company involved in that particular transfer.

Q. Simply a transfer from one party to another? A. That is correct.

Q. In a transfer of that sort, when would you change any outstanding insurance on your records, insofar as that particular property is concerned? A. Well, we would not change any record whatsoever to the new owner by that transfer until such time as we received the actual deed of transfer, the Recorder's receipt for that transfer, and a letter from the former owner notifying us that there was a transfer in the property, and his interest in the insurance is thereby canceled by that transfer, and we should change our insurance to read in the name of the new owner.

75 Q. Because your record would show this property was transferred from Leonardo to Auteri in June of -- November 23, 1951, it wouldn't indicate by any manner of means that the property hadn't formerly been transferred, would it? A. No, sir, not necessarily.

* * * * *

CHARLES C. JAMES

was called as a witness and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BONUSO:

Q. Will you state your full name? A. Charles C. James.

Q. And you are from the tax recorder of the District of Columbia's office? A. Tax Assessor's Office of the District of Columbia.

Q. You are here under a subpoena whereby you have been asked to bring a record of 1764 Columbia Road? A. That is correct.

76 Q. Calling your attention to 1945, say May or June of 1945, who was that property assessed against and whose name was it in? A. May 7, 1945, P. S. Leonardo took title to Lot 28 in Square 2864, which is known as premises 1764 Columbia Road, Northwest.

MR. TYSON: That is July of 1945?

THE WITNESS: May 7, 1945.

BY MR. BONUSO:

Q. Has that property been transferred since May 7, 1945? A. Yes, it has. On December 27, 1949, it was conveyed to Rebecca Auteri, or Rebecca Leonardo Auteri.

MR. BONUSO: I have no further questions.

CROSS EXAMINATION

BY MR. TYSON:

Q. Mr. James, where did you get the record that it had been transferred on December 27, 1929?

THE COURT: You mean 1949.

MR. TYSON: 1949. I am sorry.

THE WITNESS: The Recorder of Deeds sends you each day a digest of all deeds that are put on record in his office.

BY MR. TYSON:

Q. So that if the property had been transferred but had not been put on record, you would have no notice of that at all? A. None whatsoever.

* * * * *

102

PETER S. LEONARDO

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TYSON:

Q. * * * What is your full name? A. P. S. Leonardo.

Q. P. stands for Peter? A. Yes.

Q. Peter S. Leonardo. Where do you live? A. 1764 Columbia Road, Northwest.

Q. When did you first meet the plaintiff in this case? A. In the spring of 1945, late spring of 1945.

Q. Where did you meet her? A. I think it was at a dance.

Q. Did you immediately become friendly with her? A. No.

Q. Did you have discussion with her at any time of your private business, private affairs? A. I had.

103 Q. Did you ever request her to marry you? A. Her to marry me?

Q. Did you ever request her to marry you? A. Never. No.

Q. Did you ever agree to marry her? A. No.

Q. Did you contract to marry her? A. No.

Q. Orally or in writing? A. No.

Q. Did you ever tell any of the members of your family that you had married her? A. No.

Q. Did you ever introduce the plaintiff to anyone as your wife?
A. No.

Q. Did you have friends to visit you who acted toward the plaintiff as though she were your wife? A. No.

Q. And you purchased the property May 4, 1945, at Columbia Road? A. It was a little later date, in May; a little later date.

Q. You purchased this property from M. E. Dower? A. Yes.

104 Q. And you bought it on the 4th of May, 1945? A. 1945.

Q. This deed was recorded on the 7th day of May, 1945? A. That is correct.

Q. Now, I show you this deed --

MR. TYSON: First, will you please mark this as Exhibit No. 4?

(Document referred to was marked Defendant's Exhibit No. 4, for identification.)

MR. TYSON: This is a deed, if your Honor please, between M. E. Dower and Mr. Leonardo, entered into on the 4th day of May, 1945, and recorded the 7th day of May, 1945.

BY MR. TYSON:

Q. I show you this deed, Mr. Leonardo. What does that represent? Does that represent the transfer of the property from you to your daughter? A. Yes, sir.

Q. What date was it transferred? A. That was on the 8th day of May, 1945.

Q. When was it recorded? A. 27th day of December, 1949.

Q. 1949? A. Yes.

MR. TYSON: Do you have any objection?

MR. BONUSO: No.

105 MR. TYSON: This is Exhibit No. 5.

(Document referred to was marked Defendant's Exhibit No. 5, for identification.)

MR. TYSON: This is the transfer of the property on May 8, 1945, to the daughter.

BY MR. TYSON:

Q. Did you ever invite the plaintiff to come and live with you?
A. No, sir.

Q. How did she get there? A. She invited herself.

Q. You didn't object? A. I says, "I don't have any place for you, but you could make yourself at home, the best way it is, but there is no sleeping together. Forget that."

Q. Did she ever give you any money to pay for that property?
Did she ever give you any money to pay for the property? A. Advance any money?

Q. Yes. A. Not a penny.

Q. Did she ever pay any taxes? A. Not a penny in taxes, either.

Q. Did she ever pay any water rent? A. No water rent.

106 Q. Did she ever pay for any of the license fees? A. No.

Q. Did she get any occupancy or other permits necessary for the operation? A. No.

Q. You heard her testify that she used her money to buy some furniture; is that so? A. She only bought one piece, that she left before the police, where she came in there and took the piece back with her.

Q. I take it your answer is, she bought one piece of furniture?

A. One piece.

Q. What was that piece of furniture? A. Cheap secretary.

Q. A cheap secretary? A. Yes.

Q. You indicated she took that when she left in 1949? A. After she had left before the police.

Q. What do you mean, before the police? A. Well, she called the police and Mr. Bonuso called me on the phone. She had Mr. Bonuso, just happened to be at the phone, and I answered the telephone, and she was still there, and Mr. Bonuso said, "What's going on?" Said, "Nothing."

107 "You want to talk to her?" So Mr. Bonuso talked to her, and then the police asked -- she said --

Q. Let's get this straight. You say that -- I asked you what about this police business. Did you say that there was a discussion between you and the plaintiff here? A. She was still, when she thought she had called the police, before --

Q. Why did she call the police? A. Because she said I mistreated her, and when the police came, there was no evidence of it.

Q. You say she had been maltreated -- you had maltreated her?
A. That I had maltreated her.

Q. What do you mean by "maltreated"? A. Well, I don't know. I believe she said I had choked her.

Q. And the police came? A. And the police came. And they

wanted to know what was going on there.

Q. What did you say? A. They asked me, is she my wife, and I said no. And then they turned to her and said, "If you don't like this man, why don't you leave?" So she packed up and gone.

108 Q. She packed up and left? A. Yes.

Q. Did she ever come back? A. She come back after a while.

Q. When did she come back? A. Well, once there was a day, or the second day, or third day, or when, but she did come back.

Q. When she came back, how did she get in? A. She still had her key. She got in that way.

Q. How did you get -- A. Sometimes it's a business place, and the door was wide open, and she took herself inside there without any key, and I just wasn't rude enough to say, "Get out right now."

Q. Did you ever get that key back? A. I did get the key.

Q. How did you get the key back? A. Well, she came over one evening and put the key on the door, and I opened it, and I had the chain on.

Q. What do you mean "by chain"? One of those slit affairs?

A. Yes.

Q. So she opened the door, and what happened? A. She opened the door, and I just happened to be at the door, about at the door, and when I seen through the chain she was there, I took the key out and she left
109 without any complaint.

Q. She couldn't get the door open, because of the chain? A. No. I did not take the chain out. I just reached my arm and took the key out, and that was the end of it.

Q. You took the chain out or the key out? A. The key out, I meant.

* * * * *

110

CROSS EXAMINATION

BY MR. BONUSO:

Q. Mr. Leonardo, before you moved to 1764 Columbia Road, you had a place of business at 1830 Columbia Road; is that right? A. Yes.

Q. And you were evicted from there; is that correct? A. Yes.

Q. So when Mrs. Leonardo testified that you had been evicted from 1830 Columbia Road, she was telling the truth, was she not? A. Well, I don't know.

Q. What? A. She came just about that time.

Q. She came into your life about that time? A. Wait a minute.

Q. She came into your life, you met her about that time? A. Yes.

Q. And that was in the early part of 1944; is that correct? A. No.

111 Q. When was it? A. It was in May of 1945.

Q. Oh, 1945. You are right. May of 1945. Now, when were you evicted from 1830 Columbia Road? A. Well, I got out of there on May 5th.

Q. May 5, 1945? A. Yes.

Q. And you discussed that with Mrs. Leonardo, did you not?

A. Yes.

* * * * *

112 Q. And you say in July of 1945 this lady came right into your home; is that correct? A. She came as a friend.

Q. As a friend. And did she spend the night there? A. No.

Q. When did she commence spending her nights there? A. Well, after -- you see, I had already moved in for some time before she asked me if she could come in there.

Q. What did you say? A. I said I have no place for you, but if you want to come in, I says, you are an adult, you are a married woman, or have been married, and you should understand the philosophy of life, to enter a man's home without authorization, legal authorization, it don't look very nice. She said, "I am used to it," or something like that.

* * * * *

119 BY MR. BONUSO:

Q. Now, Mr. Leonardo, when you purchased this property on May 7, 1945, how much did you pay in cash for this property? A. \$4,000.

Q. How much? A. \$4,000.

Q. I think you said you took the deed on May 7, 1945, and

immediately, on May 8, 1945, you transferred it to your daughter.

A. Yes.

Q. Now, how much did your daughter give you for this deed?

A. She paid me \$10.

Q. How much? A. \$10.

Q. Where was your daughter when she gave you this \$10? A.

Where was she?

120 Q. Yes. A. Present.

Q. Present where?

MR. TYSON: In Baltimore or Washington?

THE WITNESS: In Baltimore.

BY MR. BONUSO:

Q. You made the deed to her and signed it here, did you not?

A. I think that the deed was -- I think the deed was made here and signed here by both.

Q. The deed was signed by both here? A. Yes. I think -- I am not sure.

Q. Why would she have to sign the deed? A. Well, I don't know the procedure about a deed, but I signed it.

Q. Now, this is the deed that was introduced in evidence, from your daughter to you. You show me where she signed it. A. I signed it.

Q. You signed it? A. I remember.

Q. So you weren't both together? Were you or weren't you?

A. Well, I don't recollect.

121 Q. Sir? A. We were not.

Q. You were not? A. No.

Q. When did she give you the \$10? Was it after you signed the deed?

MR. TYSON: If you know.

MR. BONUSO: If Your Honor please, I hate objections from counsel. If he has any objection, let him address himself to the Court.

MR. TYSON: He said he received -- that she gave him \$10. If he knows the date, all right.

THE COURT: Don't instruct your client while he is being cross-examined.

MR. TYSON: Very well, your Honor. I am sorry.

BY MR. BONUSO:

Q. Where did she give you the \$10? Was it after you signed the deed? A. I suppose so.

Q. After you signed the deed. And was that in Washington or in Baltimore? A. I don't recollect where it was.

Q. What was the conversation that you had with your daughter when you deeded this property over to her and she gave you the \$10? What did you say to her and what did she say to you? A. Didn't have to
122 say anything. "Thanks."

Q. She said "Thanks"? Did you hand her the deed? A. Sure.

Q. And she had the deed? A. Yes.

Q. And you continued living in the property? A. This was before this woman ever come in.

Q. I asked you, after you deeded the property to the daughter, did you continue living in the property? A. No -- what property?

Q. 1764 Columbia Road. A. No. That property -- I didn't move in there until after three months.

Q. Let me ask you this: After you deeded the property to your daughter, you moved into the property? A. No, I didn't, right away, because there was people that I had to put out of there before I could get in.

Q. Two or three months later you moved in the property? A. Yes. And I signed the contract.

Q. How much rent did you pay your daughter for the premises you occupied? A. I paid her everything that was left over.

Q. No. I asked you how much rent did you pay her for the portion you occupied? A. My daughter didn't ask me for no rent, as long as I
123 kept the property going and kept the payments--

Q. Did you keep the property going? A. I kept the property going to this very day.

Q. Have you given your daughter statements each month on this property? A. She trusts me for everything from the very beginning, so whatever I did --

Q. Did you ever give her any statements? A. Sometimes I give her statements, sometimes I didn't, and she trusts me all the way through.

Q. Now, when did you -- A. She trusted me yet.

Q. Now, when you made leases for the property, whose name did you make them under? Did you make any leases on the property with tenants? A. No.

Q. Never had a lease with any tenant? A. I had a lease with it for the store.

Q. Whose name was that lease in? A. My name.

Q. Your name? A. Yes.

Q. As what? A. As whatever it is, is none of your business.

124 Judge, the property was in my name -- in my daughter's name already, so why should I give this man an account of what I do at a time when that woman was never before my presence?

* * * * *

THE COURT: What the attorney wants to know is, when you gave the lease for the store, in whose name was that lease given, your name or your daughter's name?

THE WITNESS: As long as my daughter trusted me completely, between the family, what difference does it make in whose name it is given. He is trying to find out, just to work everything under the sun,
125 just to make someone guilty. And I don't know how to explain.

THE COURT: You let the Court interpret those things. All the Court wants now is the facts. Just the simple facts. Then your lawyer will argue, and he will present all the arguments that you want him to present, that he thinks reasonable.

MR. BONUSO: I am not trying to make anybody guilty. What I am trying to do is to get the truth and the facts.

THE WITNESS: You have always been arrogant and abusive. I must say that. I am sorry.

MR. BONUSO: Let the Court decide that.

BY MR. BONUSO:

Q. Now, the question I asked you, when you made a lease for the store, whose name did you make the lease under, your name or your daughter's name? A. I suppose I made it in my name. Is that any of your business?

MR. TYSON: Did you make it in your name, Mr. Leonardo?

THE WITNESS: Yes.

MR. BONUSO: As owner?

THE COURT: That would follow.

MR. BONUSO: Yes, sir.

BY MR. BONUSO:

Q. Did you ever tell a tenant that your daughter owned the building?

126 A. What I own, my daughter owns; and what my daughter owns, I own.

Q. What your daughter owns, you own? A. And what I own, she owns.

Q. Now, did you have any difficulty with the Rent Control Board, from 1945 until this deed was recorded?

MR. TYSON: I object to that, Your Honor. What difficulties he had with the Rent Control Board would have nothing to do with any marital relationship with this plaintiff.

MR. BONUSO: Maybe not on the marital relationship, but there is a piece of property involved here also. What I am trying to show --

MR. TYSON: Dower interest, if your Honor please.

MR. BONUSO: What I am trying to show by the Rent Control, by that question, is that there was controversy at the Rent Control Board, and he represented himself as the owner, and the true owner has never appeared in this case, so the alleged owner, Mrs. Auteri, has never appeared.

MR. TYSON: We have no objection to that. We admit to that, if your Honor please.

THE COURT: Very well, then. Proceed.

* * * * *

138 BY MR. BONUSO:

Q. Why didn't you put her out? A. Put her out?

139 Q. When she wanted to come in your home, why didn't you put her out? A. I put her out.

Q. Yes? A. She put herself out.

Q. No, no. When she came in, in July of 1945, why didn't you say, "My dear lady, I don't want you here," and put her out, just close the door? A. Why didn't I?

Q. Yes. A. Because if a woman has any integrity at all, I would say that she should know her own integrity, she should know her own self, as to how to proceed to be a lady.

Q. All right. Now, isn't it a fact you didn't put her out, because you owed her money, and she had given you money toward this property? A. No.

THE WITNESS: Your Honor, --

THE COURT: Yes.

THE WITNESS: This woman tells me she had a little pool where she worked and it was some \$200, and nobody touched that money. The \$4,000, I can tell you where I got the money. I had two of my own, and \$2,000 that I got from the Second National Bank, borrowed from the Second National Bank, through Mr. Morey, which was a realtor and owner of the building at the time. He had his office in the same bank building, and we went downstairs to the bank and he introduced me to them and
140 told them that for me to get the first deed of trust against the property, that if they would loan the balance, so that I would pay out the first mortgage, and Mr. Morey arranged for it, and the bank approved the loan, that I was to pay so much a month, which I did, and finally I got it paid in a couple of years.

* * * * *

147 BY MR. BONUSO:

Q. Isn't it a fact that Mrs. Leonardo helped you to convert this

unfurnished house into a furnished apartment house? A. That is my brains for that.

Q. Did Mrs. Leonardo help you, this lady here? A. Did she help what?

Q. Did she help you convert it from unfurnished to furnished?

A. No.

Q. When you purchased the place, was it furnished or unfurnished?

A. It was unfurnished, and I purchased the furniture for the two apartments that the building contains that are rentable, and the other I accommodated by the best I could, by buying what little I could, used.

Q. Then you converted it from unfurnished apartment house to furnished apartment house; is that correct? A. Yes.

Q. And did this lady help you do any of the work? A. No.

Q. She never put in any of the money? A. No.

148 Q. Isn't it a fact that each pay day she would give you her check?
A. No.

Q. Isn't it a fact that you and she had signed notes at the Riggs Bank in sums of \$2,000? A. No.

Q. Isn't it a fact that you have signed several notes in the sum of \$2,000? A. No.

Q. Now, when you were converting this property from unfurnished to furnished, you say it is not a fact that this lady here gave you money to do that? A. No.

* * * * *

Q. Now, where did you get the money to do the converting?

A. I worked, my dear. I am still working.

149 Q. Where did you work? A. In my own shop, if you please.

Q. You used the money from your shop? A. When I look at you straight in the eye, I am not ashamed of it, you know.

Q. Mr. Leonardo, I am not trying to argue with you. A. You are doing plenty.

Q. Then you got the money to convert out of the shop with your hard work and sweat, did you? A. I hope to tell you.

Q. Why didn't you get the money from the landlord? A. Landlord?

Q. Yes. Your daughter owned the property. You didn't own it.

MR. TYSON: That is argumentative, if your Honor please.

THE COURT: That is true.

BY MR. BONUSO:

Q. How much did your daughter donate towards the property?

A. You are some boy; ain't you wonderful?

Q. How much did your daughter contribute towards converting this property from unfurnished to furnished? A. I worked for my daughter, day and night, and I put every penny that I make towards her.

150 MR. TYSON: Answer the question.

BY MR. BONUSO:

Q. How much did your daughter contribute toward converting from unfurnished to furnished? A. All that I collected out of the building to keep the building going.

Q. I said, how much money did she give you?

MR. TYSON: If she gave you anything, say so.

THE WITNESS: She did not have to give me anything, because I am working for her.

BY MR. BONUSO:

Q. What do you mean? A. I pay every bill.

Q. She is the landlord, if she owns this property, according to you -- isn't that right? A. He is making my daughter a stranger that has to collect money --

MR. TYSON: I hate to keep getting up, but the record shows who the property belongs to, and if he wants to argue with the witness --

MR. BONUSO: Evidently, Mr. Tyson --

THE COURT: If the daughter made any contributions other than the \$10 that you spoke of toward the purchase or furnishing of the house, you may say so now. And if you do not state what it is, the Court will conclude that she did not make any, other than the \$10.

* * * * *

152

NELL M. LEONARDO

was recalled as a witness and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. BONUSO:

Q. Mrs. Leonardo, during the time you lived with Mr. Leonardo, how much were you earning per year? A. From \$2,400-plus to \$2,700.

Q. How many years did you live with Mr. Leonardo? A. Five years, plus.

Q. During that time what did you do with the money you were earning? A. I pooled it. Everything I earned went into it, from \$195, when we bought it, to \$450. And Mr. Tyson helped us.

Q. When you pooled it, what did you do? A. Pooled it for investments, improvements, whether it was plate glass in the store, or the roof, or anything. When we repapered, it went towards the paper company, and I selected the paper, and went out and found the linseed oil to go in the paint, and I did everything I could, and also worked with Mr. Leonardo for the good of the cause, for our own mutual benefit, not for myself, not for him, but for us.

MR. TYSON: What was that answer?

153

MR. BONUSO: She said all the money she made, which was between \$2,400 and \$2,700 a year, for five years, she pooled with Mr. Leonardo, in a common cause. Further, she bought linseed oil, painted and scraped, and helped him, with the help of Mr. Tyson, to raise the rentals from \$180 to \$410. Evidently she meant when you were in the Rent Control Board.

* * * * *

154

MR. BONUSO: I have several more questions I want to ask, if your Honor please.

THE COURT: We will adjourn until tomorrow morning, then.

MR. TYSON: Mrs. Auteri comes from Baltimore, and I wonder if she may be excused, because she works in a department store over there. I am not going to use her.

THE COURT: You don't need her any longer, do you?

MR. BONUSO: No.

THE COURT: Mrs. Auteri may be excused, then. We will conclude the rebuttal testimony in the morning. You can then present the notes.

Court is adjourned until 10 o'clock tomorrow morning.

* * * * *

155

Wednesday, April 25, 1956.

The hearing in the above-entitled matter was resumed before the Honorable Robert N. Wilkin, in Courtroom No. 14, United States District Court for the District of Columbia, commencing at 10:00 o'clock a.m., April 25, 1956.

* * * * *

156

BY MR. BONUSO:

Q. Mr. Leonardo, I think one of the last questions I had asked you last evening was whether you and Mrs. Leonardo had ever borrowed any money from the Riggs Bank, and had given the Riggs Bank a note in payment thereof, and I think your answer was no; is that correct?

A. I borrowed money myself.

Q. The question I asked you was, you and Mrs. Leonardo borrow jointly? A. No.

Q. Never? All right. Now, I show you this, and ask you if that is your signature? A. \$2,000.

Q. The only question I asked you: is that your signature on there? A. Yes.

157

Q. That is your signature? A. I think it is. Yes. I will say so.

Q. All right. Now, I show you this -- A. May I see that one?

Q. Sure. A. What are you trying to get at?

Q. I am trying to get at nothing. I just asked you one question.

A. This name was added after, because I can prove it to you.

Q. The thing I asked you was: is that your signature on that note?

A. Yes. But there was no under signature on there, not at the time.

Q. There was none? A. I will prove it by the date. What date it says there --

MR. TYSON: Just answer the question, please.

BY MR. BONUSO:

Q. As I understand your testimony now, the signature on this note is yours, but the signature of Nell M. Leonardo under there was added after you had signed the note, unbeknown to you? A. Tell me what is the date. I didn't read the date.

158 Q. January 24, 1947. A. That was borrowed by me only.

Q. Mrs. Leonardo's signature was not on this note when you gave it to the bank? A. No.

Q. Now, I show you this and ask you if that is your signature? A. Yes.

Q. Was Mrs. Leonardo's signature on there when you put your name on there? A. No.

Q. All right. Now, I show you this note, and ask you if that is your signature. A. That is my signature.

Q. And Mrs. Leonardo's signature is not on there, or was not on there when you signed that note? A. No.

MR. BONUSO: If your Honor please, I now introduce into evidence a note dated January 24, 1947, made payable to the Riggs National Bank, in the sum of \$2,000, which Mr. Leonardo says is his signature on the note, but that Mrs. Leonardo's signature must have been put on there sometime thereafter.

159 I also introduce into evidence a note in the sum of \$1,500, dated April 24, 1947, wherein Mr. Leonardo says it is his signature on the note, but that Mrs. Leonardo must have put her signature on it thereafter.

I also want to introduce into evidence a note in the sum of \$1,300, dated July 24, 1947, made payable to the Riggs National Bank, which Mr. Leonardo says is his signature on the note, and that the name of Mrs. Leonardo must have been put on there sometime subsequent thereto.

MR. TYSON: I object to the introduction of the evidence, if your Honor please, because I don't know for what purpose it is being introduced. Two names appear on there, P. S. Leonardo and Nell M. Leonardo,

and both of them were after 1946. They could make joint notes. You and I could make joint notes. Her name was Nell M. Leonardo after 1946, and I don't understand why they are being introduced and for what purpose. If I get the purpose, then probably I will not oppose introduction of them.

THE COURT: It seems to me to go to the claim of the plaintiff, that they had cooperated together and pooled their interests and made joint contributions to their living expenses and the payment of whatever was due, to acquire that property.

MR. TYSON: If your Honor please, there is no evidence that I know of that they pooled their interests for anything jointly, other than she said she gave him all her money. What for, I don't know. She said she bought paint, and so forth.

160 THE COURT: Well, it bears on their general relationship, and certainly it is, to my mind, important now as bearing upon the credibility of this witness.

MR. TYSON: I have no doubt that is what the exhibits are introduced for.

THE COURT: And further, it seems to me a very serious matter. I think this Court should insist upon further testimony here. The Court would like to know who delivered that note to the bank and who got the money.

MR. BONUSO: I will ask that question now.

MR. TYSON: If your Honor please, will you reserve the exception?

THE COURT: Yes. The record will show your objection.

BY MR. BONUSO:

Q. Mr. Leonardo, when you signed this note to the Riggs National Bank, you brought it over there yourself, did you not? A. Yes.

Q. And you received the money? A. Yes.

Q. Now, you stated that your signature was on there. A. I did not receive the cash. They gave me a check to cover --

161 Q. They gave you a check, and you expended the check? A. Yes.

Q. Now, I think you testified that that was -- A. Please. As far as I remember.

Q. What do you mean, "as far as I remember"? A. As far as I remember, I got a check. It could have been cash, but I doubt it very much.

Q. You either received cash or a check? A. Or a check.

Q. You received a check and cashed it and spent it? A. I didn't have to cash it. I presented the check to the realtor.

Q. The bank? A. To the realtor.

Q. Now, you testified that if Mrs. Leonardo's signature appeared on that note, that she must have put it on at a subsequent time, and it was not on there when you signed the note. A. It was not on there when I signed the note. I am surprised to hear such a story.

Q. Now, I show you this, and ask you if you can identify any of these from the Riggs National Bank? A. \$7,300 --

Q. No. As I understand it, it is \$73.40. A. Oh.

162 Q. The principal was \$80, and \$1.40 was interest. Isn't that the way you paid it back? A. Well, if she went and paid for me, I don't know. If she went and paid for me, she forged the name.

Q. She forged the name? Now, Mr. Leonardo, maybe this will help you. I will hold this before you and read it to you and with you:

"\$2,000, Washington, D. C., January 24, 1947. 90 days after date we jointly and severally promise to pay to the order of the Riggs National Bank, of Washington, D. C., \$2,000."

MR. TYSON: If your Honor please, it was my opinion that the Court reserved the acceptance of this evidence until after he laid his foundation. If he is going to read it into the record, it seems to me that he is trying, by the back door, to get something into the record that hasn't been accepted by the Court at this time.

THE COURT: Well, maybe I wasn't explicit enough. When you made your objection, I thought I had said enough to indicate I was overruling it and that I would receive it.

MR. TYSON: I beg your pardon.

MR. BONUSO: These will be accepted, then?

THE COURT: They are accepted in evidence.

163

(Documents referred to were marked Plaintiff's Exhibits 8, 9, and 10, and received in evidence.)

BY MR. BONUSO:

Q. What did you mean when you signed that note and said, "We jointly and severally"? A. Why is this?

Q. Just answer the question, please.

MR. TYSON: Answer the question, if you can.

MR. BONUSO: Don't coach the witness. Let me handle him. You will get your turn.

THE WITNESS: That name appears on the address and not on the line. There was a space on the line.

BY MR. BONUSO:

Q. Now, Mr. Leonardo, -- A. There was plenty space on the line.

MR. BONUSO: Judge, is there some way we can get this man to answer our questions? He understands the questions.

THE COURT: Well, that again seems to me as argument, and an inference which can be drawn from the evidence. You are now showing, trying to develop from him a concession of the improbability of his testimony.

MR. BONUSO: Yes, your Honor.

THE COURT: I don't think that is necessary.

* * * * *

164

THE COURT: All right. Before you do that, I don't recall specifically, but it seems to me the plaintiff testified that she did sign notes.

MR. BONUSO: Yes, your Honor.

THE COURT: Is that true?

MR. BONUSO: Yes.

THE COURT: I would like to have her identify and testify again

when she put her name on there, and why, and the circumstances; and if necessary, we should call somebody from the Riggs National Bank. As the presiding Judge in this Court, I do not approve of passing lightly testimony such as this.

MR. BONUSO: Yes, your Honor. I can understand it, and I can see your reason.

THE WITNESS: May I say something to your Honor?

THE COURT: Yes.

THE WITNESS: When I borrowed this money, --

THE COURT: Speak up, so your counsel can hear.

THE WITNESS: When I borrowed this money, the manager of the Riggs National Bank called the Northwest Branch, Eighteenth and Columbia Road, spoke to another gentleman at the headquarters, saying, "This man has borrowed money from banks before, and I think that we can trust him."

Therefore, they consented to make a loan, and there was no other than me present to this retired now manager of the Northwest Branch.

165 This is new to me, and it is a shocking thing to hear such a -- as you might say -- nice work.

THE COURT: If this man took that note to that bank in the form in which it appears here now and got the money, this Court would be inclined to take some disciplinary action. And if his name alone was on that note when he got the money, as he said, and the plaintiff's name was added afterwards, and that note was brought in here to this Court, the Court would take disciplinary action against her, and possibly against counsel, if counsel had any warning at all of such a thing.

MR. BONUSO: If your Honor please, along that line, I may say that as far as I am concerned, I received these from my client. As far as my client is concerned, I am not worried, because each notice of payment is in the name of P. S. and Nell Leonardo, by the Riggs National Bank. They are all here. A letter addressed by the Riggs National Bank to P. S. and Nell M. Leonardo:

"We enclose note described below, which has been today paid."

Signed by a bank officer. So I am not worrying about whether her name was on it when the note was made or not. Furthermore, the note reads, "We jointly and severally." And "we," is certainly not Leonardo alone.

166 And the bank, in making this note, certainly wouldn't have Mr. Leonardo sign singly a note which says "jointly and severally." So there had to be two names on there, your Honor, and the note indicates that. The next note, "We jointly and severally," again. Each note says that.

THE COURT: Well, I don't like to argue it or go into it further at this time, but I charge counsel on both sides that this Court takes this matter and thinks this should be fully explained. I am reserving judgment as to what ought to be done. I don't think a Judge can sit on a bench in the United States District Court and hear testimony like this and let it pass. It requires a full exposure, and the Court wants to know who is responsible.

MR. TYSON: If your Honor please, I want the Court to know that I never had the slightest idea about any such notes or anything else until this morning.

THE COURT: I am not inferring anything, but I will say one thing more, because I want the facts developed. We have gone into it so far and the Court would want more facts than it has now. Just those slips do not prove that this woman signed with his knowledge. It might have been that he went to the bank with his signature and asked -- and they may have asked her to come in later and sign it.

167 before it was cashed. But the Court wants to know, was it signed by her, with his knowledge. Was it the kind of evidence that you brought it in here to offer to this Court? And I want the facts fully developed, so if the Court takes action, it will not be acting prematurely.

This presents a set of circumstances that must be investigated. I am not so much concerned now about this case and the judgment between these parties. I am concerned about the proper procedure in the Court at this time. People must not be permitted -- and since I have been serving here, gentlemen, I have gained the impression that in many

cases people take too lightly the oath, and they come into this Court, and I make allowance for the fact that in the District of Columbia there are cases coming into the United States District Court that no United States District Court in the United States would have in any state.

You realize that. There is a character of cases that go to the state court in all the states, and I realize that there had to be some relaxation of the procedure that is followed in all other United States District Courts. There is a letdown here, a failure to maintain the standards that are maintained in the United States District Courts generally throughout the country.

168 I can say to you that I have talked with other visiting Judges, and if they have served here for a month or two, they get the same impression.

Now, Congress has passed a law taking domestic relation cases out of this Court at an early date, and it is a sincere hope of mine that practice in the United States District Court in the District of Columbia will be brought up to the standard of practice in U. S. District Courts generally.

When you are dealing in domestic relations, you have to allow a little more latitude than you do otherwise. But the practice here has become a little too loose. Cases are brought that should not be brought, and then they are presented without enough responsibility assumed by the parties and their counsel. There is a tendency to just go into Court and tell a story, somebody says somebody "done me wrong," and they bring that into Court.

The issues are not clearly defined before cases come to trial, and I have had cases again and again which at the end of the whole hearing, my outstanding impression was the case should have been dismissed on a pre-trial conference.

I think a full disclosure, a full investigation by the attorneys in this very case, and then a full disclosure by the attorneys to a pre-trial Judge, might have disposed of this case. If not, if there were disputes,

169 as now we see there are, then this case had to go to trial. The

kind of testimony that has been offered here, well, I will only say at this time, prompts the Court to say that a further investigation should be made.

MR. TYSON: All right, your Honor.

MR. BONUSO: All right, sir.

THE COURT: Do you want to talk with your witness?

MR. BONUSO: Yes.

THE COURT: I wish counsel would confer, because unless an admission can be made or a stipulation as to what the situation was when that bank note was cashed, when it was delivered to the bank, then I think we should call some officer of the bank.

MR. BONUSO: I have in mind to ask Mr. Leonardo who the man was that he dealt with at the bank.

MR. TYSON: May I suggest this: that the four of us get together, and see if we can work this out to the satisfaction of the Court?

THE COURT: All right.

Court will be in recess.

The four of you should confer, and I think counsel should confer first, and then they may confer with their clients.

(There was a brief recess.)

170 THE COURT: You may proceed.

MR. BONUSO: If your Honor please, I would like to have the official from the Riggs National Bank excused. I don't imagine your Honor would want to hear from him.

MR. TYSON: For the record, I think we should indicate to the Court that we stipulated that this note was signed jointly with relationship to the Silver Spring property.

THE COURT: Very well.

MR. TYSON: And that when he gave his testimony, he thought it was with reference to notes given for this property here in the District. I take that responsibility, because I have impressed on his mind that this case has to do with 1764 Columbia Road, and I know that is the reason for it.

THE COURT: I hope you impressed upon his mind the care and responsibility he must exercise when he gives testimony in Court. Be sure that he doesn't put himself in the position that the Court was led to think he was in, because that is serious. A witness must be painstaking to explain to the Court exactly what he means.

And as to the witness from the bank, he may be excused, and the Court expresses appreciation of his coming. Since you were subpoenaed, there has been a stipulation whereby your testimony is not necessary. Now, these notes have been offered and have been received. You have nothing more?

171 MR. BONUSO: No, your Honor.

MR. TYSON: I simply want to introduce --

THE COURT: It is not necessary, unless you want to ask him some questions. I will receive it in evidence.

MR. BONUSO: May I see it?

THE COURT: There was testimony about it, and I understand what it is.

(Defendant's Exhibit No. heretofore marked for identification, was received in evidence.)

THE COURT: It will be received as the power of attorney given by the daughter to the defendant.

MR. TYSON: In 1948, I believe, if your Honor please. The date is the 23rd day of October, 1948, and it was recorded in the District of Columbia in January of 1950.

THE COURT: The case will be marked submitted, and if it is necessary for counsel to file briefs, how much time do you wish?

MR. BONUSO: I suppose, being the plaintiff, I would be the moving party. About a week.

THE COURT: Very well. Do you wish a week to reply?

MR. TYSON: I would be very happy to have that much time. I don't believe I need it.

172 THE COURT: Could you both file briefs in a week, and then if there is anything in the opposing brief that you wish to reply to,

you will have three more days to do that.

MR. TYSON: I believe so.

THE COURT: So that in ten days the case will be fully submitted.

MR. BONUSO: All right, your Honor.

MR. TYSON: That is satisfactory with me, if your Honor pleases.

* * * * *

184

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 13, 449

NELL M. LEONARDO, Appellant

v.

PETER S. LEONARDO and REBECCA AUTERI, APPELLEES

Appeal from The United States District Court
for the District of Columbia

Decided December 13, 1956

Mr. Joseph M. Bonuso for appellant.

Mr. James G. Tyson for appellees.

Before WILBUR K. MILLER, BAZELON and BURGER, Circuit Judges.

BAZELON, Circuit Judge: Appellant sued to impress her dower rights upon certain real property in the District of Columbia, claiming that she was the common law wife of appellee Leonardo and that she had contributed her funds and services to the improvement of the property and the enhancement of its value. Appellee denied the marriage and contended, moreover, that, prior to the date of the claimed marriage, he had made a bona fide conveyance of the property to his daughter, appellee Auteri.

185

The district judge, after trial, concluded that the Leonardos entered into a common law marriage on July 9, 1945.

So far as the property is concerned, a vigorous contest developed at the trial as to whether it was in fact conveyed to the daughter, appellant contending that there was merely a paper transaction designed only to defeat appellant's rights but not actually affecting the ownership of the property. We do not reach the question whether the record supports a finding that the property was conveyed to the daughter, for we are stopped at the threshold by the insufficiency of the judge's finding in this regard. His conclusion that "title to the property . . . was acquired by the daughter . . . before the common law marriage was entered into . . ." was based upon a finding that the property "was deeded by the defendant Leonardo to his daughter before the common law marriage was entered into; that the daughter paid \$10 as consideration for the said property; and that thereafter she executed a power of attorney to the defendant Leonardo, which authorized him to manage the property and live therein rent free; that no misconduct was shown against the defendant, Rebecca Auteri, to warrant a judgment or decree against the said property." [Emphasis supplied.] No finding was made as to whether or not the deed was delivered, a point as to which there seems to be substantial doubt on the basis of this extremely confusing and inadequate record. The insufficiency of the findings in this critical respect requires that the judgment be reversed and the case remanded with directions to make adequate findings. If necessary for this purpose, further evidence should be taken.

Upon this remand, the record should also be made to reflect the evidence which, according to the judge's findings, "disclosed that the plaintiff and the defendant Leonardo owned real estate by the entirety in Maryland; that the plaintiff's interest in the Maryland property fairly represents plaintiff's equitable interest in the property acquired by reason of the common law marriage." On oral argument counsel agreed that all the evidence bearing upon this finding was given "off the record."

Reversed and remanded
with directions.

183 [Filed January 4, 1957]

No. 13, 449

October Term, 1956.

Nell M. Leonardo,

C. A. 1925-54

Appellant,

v.

Peter S. Leonardo
and Rebecca Auteri,

Appellees.

APPEAL from the UNITED STATES DISTRICT OF COLUMBIA
Before: Wilbur K. Miller, Bazelon and Burger, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof it is ordered and adjudged by this Court that the judgment -- of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to proceed in conformity with the opinion of this Court.

It is further ORDERED by the Court that appellant herein recover from appellees her taxable costs on this appeal and have execution therefor.

Dated: December 13, 1956.

Per Circuit Judge Bazelon.

A TRUE COPY,

/s/ Joseph W. StewartClerk of the U. S. Court of Appeals
for the District of Columbia Court

187 [Filed April 8, 1957]

ORDER

This case came to hearing on the motion of plaintiff filed January 11, 1957, to vacate the order of dismissal of this court entered January 7, 1957.

On consideration of the order and memorandum of the Court of Appeals, filed March 5, 1957, in No. Misc. 754, and it appearing that the judgment of this Court in this case was reversed only in part and that the judgment of this Court "that a common-law marriage had been entered into" was not reversed, it is the judgment of this Court that the motion to vacate should be, and is hereby granted, and such order of dismissal is set aside.

And the case being further considered on the opinion and mandate of the Court of Appeals in case No. 13449, decided December 13, 1956, this Court, in compliance with such mandate, finds:

From the testimony of the defendant Auteri and the evidence as to the deed and power of attorney and the recording thereof, that the deed in question was delivered prior to the establishment of the common-law marriage, and finds further,

That the evidence which disclosed that the plaintiff and defendant Leonardo owned real estate by the entirety in Maryland was the statements of parties and their counsel and their discussion and agreement as to the improvements thereon and the value thereof made in court and at pre-trial conferences. Such real estate was not involved directly in the controversy, and was mentioned by the Court in passing

188 when considering the claim of the plaintiff that she had contributed to the living expenses and savings during the cohabitation.

The judgment of this Court, which was based not so much on the evidence as on the failure of the plaintiff's evidence, with these additional findings and comments, is re-affirmed.

Enter -

/s/ R. N. Wilkin
United States District Judge

[Filed May 1, 1957]

NOTICE OF APPEAL

Notice is hereby given this 1st day of May, 1957, that Nell M. Leonardo hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 8th day of April, 1957, in favor of Peter S. Leonardo and Rebecca Auteri against said Nell M. Leonardo.

/s/ Joseph M. Bonuso
Attorney for Plaintiff

/s/ Nell M. Leonardo
Plaintiff,

James G. Tyson, Esq.
Attorney for Defendants
918 F Street, N. W.

BRIEF FOR APPELLEES AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14, 006

NELL M. LEONARDO,

Appellant

v.

PETER S. LEONARDO,
and
REBECCA AUTERI,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES G. TYSON

918 F Street, N. W.
Washington, D. C.

Attorney for Appellees

United States Court of Appeals
For the
District of Columbia Circuit

FILED SEP - 5 1957

Joseph W. Starnes

CLERK

Robert I. Thiel, Printer
Washington, D. C.
EX 3-0625

(i)

APPELLEES' STATEMENT OF QUESTIONS PRESENTED

In the opinion of the appellees no substantial question is raised on this appeal.

(ii)

INDEX

	<u>Page</u>
Jurisdictional Statement	1
Counter Statement of the Case	1
Summary of Argument	4
Argument:	
I. The Finding Of The Court That The Deed In Question Was Delivered Is Supported By The Facts	5
II. That The Court Has Complied With The Mandate Of The Court Of Appeals With Reference To The Maryland Property	6
Conclusion	10

Cases Cited

Colby V. Riggs National Bank, 67 App. D. C. 259, 92 Fed. 2d 183, 114 A.L.R. 1065	6
Moore v. Guy, 77 U.S. App. D.C. 379, 135 Fed. 2d 476	6

Miscellaneous

Federal Rules of Civil Procedure Rule 52	6
---	---

**UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit**

No. 14,006

NELL M. LEONARDO,

Appellant

v.

**PETER S. LEONARDO,
and
REBECCA AUTERI,**

Appellees

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BRIEF FOR APPELLEES

JURISDICTIONAL STATEMENT

The matter of jurisdiction of this Court is not controverted and the jurisdictional statement of the appellant is deemed sufficient.

COUNTER STATEMENT OF THE CASE

The case was first appealed from an order entered on May 11, 1956, wherein the Court below, after hearing, adjudged, ordered and decreed:

"That the title to the property located at 1764 Columbia Road, Northwest, in the City of Washington, District of Columbia, was acquired by the daughter of the defendant, Leonardo, before the common law marriage was entered into and that the plaintiff acquired no interest in the said property."

At the termination of the evidence received in this case by the parties the Court instructed attorneys to submit briefs instead of the usual arguments, which was done. After the submission of briefs the Court entered a MEMORANDUM BY THE COURT under date of May 9, 1956, as follows:

WILKIN, District Judge (By Designation):

"The evidence is clear, however, that the property located at 1764 Columbia Road, Northwest, in the City of Washington, was conveyed by the defendant to his daughter before the common law marriage was established. The complaint asks for a judgment declaring the conveyance of such real estate by the defendant to his daughter, Rebecca Auteri, void. The evidence is undisputed that the grantee paid \$10.00 as consideration for the conveyance and executed a power of attorney to the defendant which authorized him to manage the property. He was allowed to live in the property free of rent, and he collected rent from other tenants and applied it on the purchase price of the property. The evidence is insufficient to warrant a judgment or decree against the defendant, Rebecca Auteri. It is also insufficient to establish the plaintiff's claim to an interest in the Columbia Road property.

The evidence disclosed that the plaintiff and defendant, Leonardo, owned real estate by the entirety in Maryland. The plaintiff testified that during her cohabitation with the defendant, Leonardo, she turned over to him for their joint account and living expenses the greater part of her salary. A strict account was not kept between the plaintiff and defendant, and there is no showing of the exact amount contributed by the plaintiff. Her interest in the Maryland real estate may fairly represent her equitable interest in property acquired during the cohabitation.

Judgment for plaintiff as to common law marriage; other prayers of the complaint denied; costs to be assessed against defendant, Leonardo.

Counsel for plaintiff may prepare findings of fact and conclusions of law and final order."

Counsel for the appellant did prepare findings of fact and conclusions of law and the final order, a portion of which is the subject of this appeal.

The Court of Appeals in case #13, 449 on December 13, 1956, reversed the District Court and remanded the case with directions to make adequate findings as to whether or not the deed was delivered and also upon the remand directed the Court to reflect the evidence which, according to the Judge's findings, "disclosed that the plaintiff and the defendant owned real estate by the entirety in Maryland; and that the plaintiff's interest in the Maryland property fairly represents plaintiff's equitable interest in the property acquired by reason of the common law marriage."

That on April 8, 1957, the Trial Court without taking any further testimony ORDERED as follows:

"This case came to hearing on the motion of plaintiff filed January 11, 1957, to vacate the order of dismissal of this Court entered January 7, 1957.

On consideration of the Order and Memorandum of the Court of Appeals, filed March 5, 1957, in No. Misc. #754, and it appearing that the judgment of this Court in this case was reversed only in part and that the judgment of this Court "that a common law marriage had been entered into" was not reversed, it is the judgment of this Court that the motion to vacate should be, and is hereby granted, and such order of dismissal is set aside.

And the case being further considered on the opinion and mandate of the Court of Appeals in case No. 13, 449, decided December 13, 1956, this Court, in compliance with such mandate, finds:

'From the testimony of the defendant, Auteri, and the evidence as to the deed and power of attorney and the recording thereof, that the deed in question was delivered prior to the establishment of the common law marriage, and finds further,

That the evidence which disclosed that the plaintiff and defendant, Leonardo, owned real estate by the entirety in Maryland was the statements of parties and their counsel and their discussion and agreement as to the improvements thereon and the value thereof made in Court and at pre-trial conferences. Such real estate was not involved directly in the controversy, and was mentioned by the Court in passing when considering the claim of the plaintiff that she had contributed to the living expenses and savings during the cohabitation.

The judgment of this Court, which was based not so much on the evidence as on the failure of the plaintiff's evidence, with these additional findings and comments, is re-affirmed."

From this final order this appeal was noted.

SUMMARY OF ARGUMENT

1. The District Court has substantially complied with the directions of the remand of the Court of Appeals on the question of the delivery of the deed.

2. That the District Court has substantially complied with the directions of the remand of the Court of Appeals in reflecting the evidence which, according to the Judge's findings that "disclosed that the plaintiff and the defendant, Leonardo, owned real estate by the entirety in Maryland; that the plaintiff's interest in the Maryland property fairly represents plaintiff's equitable interest in the property acquired by reason of the common law marriage."

ARGUMENT

I

The Finding Of The Court That The Deed In
Question Was Delivered Is Supported By The
Facts.

It is submitted that the appellant testified that she first met Mrs. Rebecca Auteri in the summer of 1947. The following questions were then asked the appellant:

Q. And under what circumstances did you meet her?

A. Through a kindly friend who brought her over from Baltimore to unite the father and daughter. To unite father and daughter after many years of estrangement. He brought her over to see us.

Q. Who brought her?

A. Mr. and Mrs. de Stevano of Baltimore. (AA9)

Neither Mr. or Mrs. de Stevano were called as witnesses to this statement, nor was there any evidence adduced by or on behalf of the appellant to substantiate this statement.

The appellee, Leonardo, testified herein that the property was transferred to his daughter on the 8th day of May, 1945, (AA 23, 26-27, 28), and that he handed her the deed (AA 28).

The appellee, Leonardo, also testified that he did not move into the property until two or three months after he handed his daughter, co-appellee herein, the deed (AA 28), the appellant had previously testified that it took the appellee, Leonardo, sixty days to get possession of the premises after purchase (AA 13-14).

The appellee, Rebecca Auteri, was called by the appellant as a witness and she was examined extensively while on the stand. During the examination not one question was asked the witness in relation to any so-called estrangement with her father. The attitude of the witness

while testifying certainly did not indicate that there had been ever any estrangement with her father.

The appellee, Leonardo, was cross-examined extensively by the appellant, yet, not one question was asked relative to any so-called estrangement. As a matter of fact, inferences arising out of his testimony would certainly indicate an unusual and long relationship of parental love and affection between himself and his daughter.

In the instant case the Court found after the mandate and remand of the Court of appeals:

"*** from the evidence as to the deed... and the recording thereof, that the deed in question was delivered...."

The evidence adduced at the hearing certainly supports its findings.

It is a well established rule that the Court of Appeals must accept the Court's findings of fact unless clearly and manifestly wrong.

Colby v. Riggs National Bank, 67 App. D. C. 259, 92 Fed. 2d. 183, 114 A. L. R. 1065; Moore v. Guy, 77 U. S. App. D. C. 379, 135 Fed. 2d. 476.

The credibility of conflicting evidence is for the Trial Court to decide. Rule 52 - Federal Rules of Civil Procedure.

II

That The Court Has Complied With The Man-
date Of The Court of Appeals With Reference
To The Maryland Property.

It is submitted that in its final order from which the original appeal was taken said final order did not reflect any reference to Maryland real estate.

In the original MEMORANDUM BY THE COURT in which Memorandum the Court directed the appellant's attorney to draw findings of fact, conclusions of law and an appropriate order that the Court made the following statement:

"The evidence disclosed that the plaintiff and defendant, Leonardo, owned real estate by the entirety in Maryland. The plaintiff testified that during her cohabitation with the defendant, Leonardo, she turned over to him for their joint account and living expenses the greater part of her salary. A strict account was not kept between the plaintiff and defendant, and there is no showing of the exact amount contributed by the plaintiff. Her interest in the Maryland real estate may fairly represent her equitable interest in property acquired during the cohabitation."

The appellant's counsel omitted from the findings of fact and conclusions of law that part of the Court's Memorandum in which the Court said that the appellant's interest in the Maryland real estate may fairly represent her equitable interest in property acquired during the cohabitation, and instead in the findings of fact and conclusions of law substituted the following:

"..... the plaintiff's interest in the Maryland property fairly represents plaintiff's equitable interest in the property acquired by reason of the common law marriage."

It will be seen, therefore, that the appellant's counsel himself actually sets out the matter of which he now complains. The fact is that the Court signed the findings of fact and conclusions of law, which was agreed to by attorneys for the several parties, however, in its judgment no reference was made to the Maryland property. It was from this judgment that the original appeal was entered.

In compliance with the mandate of the Court of Appeals the District Court on April 8, 1957, found:

"That the evidence which disclosed that the plaintiff and defendant owned real estate by the entirety in Maryland was the statements of parties and their counsels.... Such real estate was not involved directly in the controversy, and was mentioned by the Court in passing when considering the claim of the plaintiff that she had contributed to the living expenses and savings during the cohabitation."

It is agreed that statements were made by both parties in endeavoring to settle the matter "off the record" and such matter did not and should not constitute evidence, however, the appellant in cross-examination of the appellee, Leonardo, regarding conversion from unfurnished to furnished accommodations in the premises located at 1764 Columbia Road and presumably in an effort to show the Court that certain definite money had been spent for that purpose asked the following:

Q. Isn't it a fact that you and she had signed notes at the Riggs Bank in the sums of \$2,000.00?

A. No.

Q. Isn't it a fact that you have signed several notes in the sum of \$2,000.00?

A. No. (AA 32).

Further, in the cross-examination of the appellee, Leonardo, beginning on Page 156 of the record through Page 170 the same line of questioning was pursued (AA 35-43).

It was not until the recess was called (AA 43) that it was discovered that the line of questioning set out above and referred to in the record had absolutely no connection with the issues in this case, were not proper, were greatly misleading, and tended to create confusion in the hearing had (AA 37). It was discovered that the notes referred to dealt with property alleged to have been purchased by the appellant and appellee, Leonardo, at 10205 Capitol View Avenue, Silver Spring, Maryland.

It is conceded by the parties that the property located in Silver Spring was not involved directly in the controversy before the Court.

In the findings of fact signed by the Court May 11, 1956, (AA 6) the Court found that the plaintiff during her cohabitation with the defendant turned over to him for their joint account and living expenses the greater part of her salary; that no strict account was kept between them. That finding is certainly borne out by the appellant's own testimony, for she testified as follows:

BY MR. BONUSO:

Q. I think you testified, Mrs. Leonardo, that during the time you had been keeping company you loaned him some money to purchase 1764 Columbia Road. How much did you loan him?

A. I don't know, because simpleton that I was, I kept no records. (AA 13).

The question naturally arises to what use was the money put which she claims she turned over to the appellee Leonardo?

The testimony revealed that within the first year the income from the apartments at 1764 Columbia Road increased from \$195.00 per month unfurnished to \$450.00 per month furnished. The fact is that the appellant herself so testified (AA 14). This amounts to \$5400.00 per year. Also in evidence is the fact that the store on the first floor was leased (AA 29). In addition to these items the evidence revealed that the appellee, Leonardo, worked in his shop over the period covered by this complaint (AA 32).

The evidence discloses that the income from the rentals of units in the building were used in payment of the expenses of running the building (AA 33) as well as the money received from the earnings in his business. That while there was no testimony adduced as to the amount received for rental of the store on the first floor or the amount received by the appellant Leonardo as income from his work, the income from the furnished apartments alone were more than twice the

amount of money the appellant claimed she earned during that period.

The question as to what was due on monthly obligations on the property was never developed nor the amount actually paid, if any.

Certainly the logical inferences arising out of the testimony adduced fail to show any apparent need for money on obligations due in excess of the income from the property itself.

As to information on the record regarding the property located in Maryland, the same was provided by the appellant herself in improper questions asked during cross-examination of the appellee, Leonardo.

CONCLUSION

It is respectfully submitted that the District Court has complied in all respects to the remand with directions of the Court of Appeals. It follows, therefore, that no substantial question of law or fact remains upon which an appeal can properly be based so that this appeal should be dismissed, and the judgment of the District Court should be affirmed.

JAMES G. TYSON

918 F Street, N. W.
Washington, D. C.

Attorney for Appellees

(i)

INDEX

	<u>Record Page</u>	<u>Appendix Page</u>
Memorandum by The Court	194	1
Stipulation for Supplemental Record	196	2

APPENDIX FOR APPELLEES

194 [Filed May 9, 1956]

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

NELL M. LEONARDO,

Plaintiff,

v.

Civil Action No. 1925-54

PETER S. LEONARDO

and

REBECCA OUTERI,

Defendants.

MEMORANDUM BY THE COURT

WILKIN, District Judge (By Designation):

The evidence in this case is clear and convincing that plaintiff and defendant, Peter S. Leonardo, lived together as husband and wife in a small apartment for about five years. She was taken by the defendant to visit his married daughter, and they occupied the same room in her house. The daughter addressed her as "mother" and wrote her letters with that salutation. The evidence is ample to establish an agreement to have a common law marriage.

The evidence is clear, however, that the property located at 1764 Columbia Road, Northwest, in the City of Washington, was conveyed by the defendant to his daughter before the common law marriage was established. The complaint asks for a judgment declaring the conveyance of such real estate by the defendant to his daughter, Rebecca Outeri, void. The evidence is undisputed that the grantee paid \$10.00 as consideration for the conveyance and executed a power of attorney to the defendant which authorized him to manage the property. He was allowed to live in the property free of rent, and he collected rent from other tenants and applied it on the purchase price of the property. The evidence is insufficient to warrant a judgment or decree against the defendant, Rebecca Outeri. It is also insufficient to establish the

plaintiff's claim to an interest in the Columbia Road Property.

195 The evidence disclosed that the plaintiff and defendant, Leonardo, owned real estate by the entirety in Maryland. The plaintiff testified that during her cohabitation with the defendant, Leonardo, she turned over to him for their joint account and living expenses the greater part of her salary. A strict account was not kept between the plaintiff and defendant, and there is no showing of the exact amount contributed by the plaintiff. Her interest in the Maryland real estate may fairly represent her equitable interest in property acquired during the cohabitation.

Judgment for plaintiff as to common law marriage; other prayers of the complaint denied; costs to be assessed against defendant. Leonardo.

Counsel for plaintiff may prepare findings of fact and conclusions of law and final order.

/s/ R. N. Wilkin
U. S. District Judge

Washington, D. C.,
May 9, 1956.

196 [Filed August 27, 1957]

STIPULATION FOR SUPPLEMENTAL RECORD

It is stipulated and agreed as between counsel that the defendants herein, Peter S. Leonardo and Rebecca Auteri, be allowed to amend and supplement the record on appeal filed herein by the plaintiff to include the MEMORANDUM OF THE COURT entered herein on the 9th day of May, 1956, as a necessary and material part of the record submitted to the Court of Appeals.

This amendment and supplement had been overlooked and omitted in error on the part of the defendants herein and this stipulation in conformity to and in compliance with the provisions of Rule 75 (h) of the Federal Rules of Civil procedure.

1955-6-61

/s/ James G. Tyson
Attorney for the defendants

No objection:

/s/ Joseph M. Bonuso, Attorney for the plaintiff.

